

No. 1320

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

AMERICAN BONDING COMPANY OF BAL-
TIMORE (a Corporation),

Plaintiff in Error,

vs.

WILLIAM FINNEY, Late Sheriff of Blaine
County, Idaho,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the United States Circuit
Court for the District of Idaho, Central Division.

FILED

JUN 1 1906

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INDEX.

	Page
Affidavit in Support of Objections to Proposed Bill of Exceptions.....	227
Affidavit of W. E. Borah.....	78
Affidavit of B. F. Neal.....	82
Affidavit of Charles F. Neal.....	30
Affidavit of Charles F. Neal and James C. Dahlman, Attached to Plea to Jurisdiction of Flato Com- mission company.....	36
Affidavit of Charles F. Neal.....	49
Answer.....	41
Answer of Defendant, Flato Commission Company..	97
Answer, Stipulation Extending Time to File.....	40
Assignment of Errors.....	233
Bill of Exceptions, Affidavit in Support of Objections to Proposed....	227
Bill of Exceptions, Objections to Proposed.....	225
Bill of Exceptions, Order Extending Time to File...	95
Bill of Exceptions, Order Refusing to Settle.....	229
Bond on Removal.....	31
Bond on Removal.....	60

	Page
Bond on Removal.....	75
Bond, Order for Filing.....	241
Bond on Writ of Error.....	244
Certificate, Clerk's, to Transcript.....	250
Certificate of District Judge.....	80
Certificate of Secretary of State.....	52
Certified Copies of Certain Orders of District Court..	53
Citation.....	249
Clerk's Certificate to Transcript.....	250
Complaint.....	15
Decision and Findings of Court.....	213
Demurrer.....	33
Demurrer of Defendant American Bonding Com- pany.....	93
Demurrer of Defendant Flato Commission Company.	94
Demurrer, Order Overruling.....	40
Demurrers, Order Overruling.....	96
Deposition of John R. Bonson.....	124
Deposition of O. W. Eaton.....	222
Deposition of George A. Hawkes.....	114
Deposition of Ed. H. Reid.....	107
Deposition of George A. Hawkes, Objections to.....	209
Deposition of George A. Hawkes, Notice to Take.....	113
Deposition of George A. Hawkes, Notice to Take.....	211

	Page
Deposition of James C. Dahlman, Objections to Testimony in.....	208
Deposition of Ed. H. Reid, Objections to the.....	204
Deposition of Ed. H. Reid, Notice to Take.....	106
Deposition of O. W. Eaton (Recalled).....	145
Depositions of O. W. Eaton and John R. Bonson, Objections to the Testimony in.....	205
Depositions of O. W. Eaton and John R. Bonson, Notice to Take.....	158
Designation of Additional Record to be Printed.....	11
Designation of Record to be Printed and Statement of Errors.....	1
Exceptions, Bill of, Objections to Proposed.....	225
Exceptions, Bill of, Order Extending Time to File... ..	95
Exceptions, Bill of, Order Refusing to Settle.....	229
Exhibit "A"—Attached to Complaint (Indemnity Bond of Foreclosure of Chattel Mortgage).....	21
Exhibit "A,"—Plaintiff's (Judgment-Roll in Cause Entitled Ralph Cowden vs. William Finney)....	159
Exhibit "D," Plaintiff's (Sheriff's Return in Foreclosure Proceedings).....	191
Exhibit "F," Plaintiff's (Judgment in Cause Entitled Ralph Cowden vs. William Finney).....	202
Findings and Decision of Court.....	213
Judgment by the Court.....	217

	Page
Motion for New Trial, Notice of.....	219
Motion to Quash.....	52
Motion to Quash Service of Summons.....	48
Motion to Remand.....	81
Motion to Remand, Order Denying.....	93
New Trial, Notice of Motion for.....	219
Notice (Copy).....	222
Notice (Original).....	252
Notice of Intention, etc. (Copy).....	223
Notice of Intention, etc. (Original).....	254
Notice of Motion for New Trial.....	219
Notice of Petition for Removal.....	26
Notice to Produce Papers.....	104
Notice to Take Depositions of O. W. Eaton and John R. Bonson.....	158
Notice to Take Deposition of George A. Hawkes.....	113
Notice to Take Deposition of George A. Hawkes.....	211
Notice to Take Deposition of Ed. H. Reid.....	106
Objections to Deposition of George A. Hawkes.....	209
Objections to the Deposition of Ed. H. Reid.....	204
Objections to Proposed Bill of Exceptions.....	225
Objections to Proposed Bill of Exceptions, Affidavit in Support of.....	227
Objections to the Testimony in the Depositions of O. W. Eaton and John R. Bonson).....	205

Page

Objections to Testimony in the Deposition of James C. Dahlman.....	208
Order Allowing Writ of Error.....	243
Order Denying Motion to Remand.....	93
Order Extending Time to File Bill of Exceptions...	95
Order Extending Time to Docket Cause (Dated De- cember 30, 1905).....	12
Order Extending Time to Docket Cause (Dated Feb- ruary 28, 1906).....	13
Order for Filing Bond.....	241
Order Overruling Demurrer.....	40
Order Overruling Demurrers.....	96
Order Refusing to Settle Bill of Exceptions.....	229
Order Remanding Cause.....	39
Order Waiving Jury.....	106
Petition for Removal of the American Bonding Company of Baltimore.....	27
Petition for Removal of the American Bonding Company of Baltimore.....	55
Petition for Removal of American Bonding Com- pany of Baltimore.....	68
Petition for Removal of the Flato Commission Com- pany.....	73
Petition for Removal, Notice of.....	26
Petition, Supplemental, for Removal.....	89

	Page
Petition for Writ of Error.....	231
Plaintiff's Exhibit "A" (Judgment-Roll in Cause Entitled Ralph Cowden vs. William Finney)....	159
Plaintiff's Exhibit "D," (Sheriff's Return in Fore- closure Proceedings).....	191
Plaintiff's Exhibit "F" (Judgment in Cause En- titled Ralph Cowden vs. William Finney).....	202
Plea to Jurisdiction.....	34
Plea to Jurisdiction of Flato Commission Company, Affidavit of Charles F. Neal and James C. Dahl- man Attached to	36
Proceedings Before District Court.....	87
Service of Summons, Motion to Quash.....	48
Statement of Errors, and Designation of Record to be Printed.....	1
Stipulation Extending Time to File Answer.....	40
Stipulation Waiving Jury.....	105
Summons.....	23
Supplemental Petition for Removal.....	89
Testimony on Behalf of Plaintiff:	
John A. Tucker.....	174
William Finney.....	177
William Finney (cross-examination).....	183
Ralph Cowden	187
Transcript of Judgment.....	230

	Page
Trial.....	62
Trial (Continued)....	63
Trial, New, Notice of Motion for.....	219
Writ of Error.....	246
Writ of Error, Bond on.....	244
Writ of Error, Order Allowing.....	243
Writ of Error, Petition for.....	231

*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Vir-
tue of the Laws of the State of Mary-
land,

Defendant in Error,

vs.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff in Error.

Statement of Errors, and Designation of Record to be Printed

To the Clerk of said Court, and to the Defendant in Er-
ror herein, and to W. E. Borah, Esq., Attorney for
Defendant in Error:

You will please take notice that the plaintiff in error
herein has filed its record in this court herein, and,
pursuant to Subdivision 7 of Rule 23 of this Court, files
with said clerk a statement of errors upon which it in-
tends to rely, and states said errors as follows, to wit:

(1) The Court erred as to said plaintiff in error, in
overruling the demurrer of said plaintiff in error to de-
fendant in error's complaint herein.

(2) The Court erred as to said plaintiff in error, in
ordering judgment to be entered in favor of the defend-

ant in error and against the said plaintiff in error, for the sum of ten thousand two hundred and ninety and 36-100 dollars and the costs of this action, and in ordering judgment in any amount whatever, against said plaintiff in error.

(3) The Court erred as to said plaintiff in error, in entering judgment in favor of defendant in error herein, against said plaintiff in error.

(4) The Court erred as to said plaintiff in error, in overruling the objection by said plaintiff in error to the admission of any evidence herein, upon the ground that the complaint herein does not state facts sufficient to constitute a cause of action against this plaintiff in error.

(5) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the judgment-roll offered in evidence during the examination of the witness Tucker, the full substance whereof is as follows :

Said judgment roll consists of the proceedings in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, in an action wherein Ralph Cowden was plaintiff and William Finney, as Sheriff of Blaine County, Idaho, was defendant, and consists ;

(1) Of complaint praying for the possession of certain sheep alleged to have been converted by said defendant as such sheriff, or for the value thereof, and for damages and costs.

(2) Of demurrer to such complaint.

(3) Of answer to such complaint, wherein defendant justified the taking of said property and the sale thereof under and by virtue of certain proceedings for the foreclosure of a chattel mortgage embracing said property, given by one R. L. Shaw to secure the payment to the Flato Commission Company of the sum therein mentioned, together with interest and costs.

That said proceedings were commenced under the provisions of secs. 3391 to 3398, inclusive, of title 12, chap. 4 of the Revised Statutes of Idaho, and are based on an affidavit and notice given by George W. Hawkes, as the agent of said Flato Commission Company.

That said property was in said proceedings sold to said George W. Hawkes, for \$5,967.83.

(4) Of findings of fact and conclusions of law in said action.

(5) Of judgment by said Court in favor of plaintiff and against defendant for the possession of the property therein referred to, or in case return could not be had, then for judgment for the sum of \$8,281.35, together with \$516.89 interest and \$750.00 costs.

(6) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the entry from the judgment docket during the examination of the witness Tucker, the full substance whereof is as follows:

“Judgment Debtor, William Finney, Sheriff Blaine County, Idaho; judgment creditor, Ralph Cowden, amount of judgment, \$8,798.24; costs, \$250.00; time of

entry, June 20, 1903; page of Judgment-Book, book 2, page 121.

(7) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the question, "It still stands as a live judgment upon the records of your office," asked of the witness Tucker.

(8) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the papers marked Plaintiff's Exhibit "E," offered in evidence during the examination of the witness William Finney, whereof the full substance is as set forth in Exhibit "A" attached to the complaint herein.

(9) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's objection to the admission in evidence of the remittitur from the Supreme Court during the examination of the witness William Finney, which in full substance was a remittitur from the Supreme Court of the State of Idaho, announcing the affirmance of the judgment and order denying a new trial in the case of Cowden vs. Finney, already referred to.

(10) The Court erred as to said plaintiff in error, in overruling said plaintiff in error's demurrer to the evidence.

(11) The Court erred as to said plaintiff in error, in sustaining said defendant in error's objection to the admission in evidence of the deposition of John R. Bonson, the full substance whereof was to the effect, first, that at the time of the alleged sale to Ralph Cowden, plain-

tiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, ~~of the sheep~~ alleged to have been converted by said Finney as such sheriff, second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, Plaintiff vs. William Finney, Sheriff, etc., defendant, in Assignment No. 5 hereinbefore referred to.

(12) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of O. W. Eaton, the full substance whereof was to the effect, first, that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company of the sheep alleged to have been converted by said Finney as such sheriff, second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, sheriff, etc., defendant in Assignment No. 5, hereinbefore referred to.

(13) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of James C. Dahlman

as to the values of sheep therein referred to, the full substance of which said evidence so rejected was to the effect that the value of the sheep alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, Sheriff, etc. defendant, in Assignment No. 5 hereinbefore referred to.

(14) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney as sheriff, and that said bond was without consideration, and void.

(15) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to said plaintiff in error's offer to prove by the testimony of J. C. Dressler that said Ralph Cowden was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; and that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not

in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

(16) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to plaintiff in error's offer to prove by the testimony of Ed Paine, first, that said Ralph Cowden was not the owner of the sheep in controversy, second that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed, third, that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw, fourth, that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

(17) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the offer of said plaintiff in error to prove by the deposition of Ed. H. Reid, that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney, as sheriff, and that said bond was without consideration, and void.

(18) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admis-

as to the values of sheep therein referred to, the full substance of which said evidence so rejected was to the effect that the value of the sheep alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, Sheriff, etc. defendant, in Assignment No. 5 hereinbefore referred to.

(14) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney as sheriff, and that said bond was without consideration, and void.

(15) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to said plaintiff in error's offer to prove by the testimony of J. C. Dressler that said Ralph Cowden was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; and that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not

in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

(16) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to plaintiff in error's offer to prove by the testimony of Ed Paine, first, that said Ralph Cowden was not the owner of the sheep in controversy, second that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed, third, that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw, fourth, that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

(17) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the offer of said plaintiff in error to prove by the deposition of Ed. H. Reid, that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney, as sheriff, and that said bond was without consideration, and void.

(18) The Court erred as to said plaintiff in error, in sustaining defendant in error's objection to the admis-

sion in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by defendant in error Finney as sheriff, and that said bond was without consideration, and void.

And said plaintiff in error, pursuant to said subdivision of said Rule, states that the following are the parts of said record which it thinks necessary for the consideration thereof:

I.

The complaint, page 1 to 7 thereof, inclusive.

II.

Demurrer to said complaint, page 17 thereof.

III.

Order overruling demurrer, page 25 thereof.

IV.

Answer of this defendant, page 26 to 30, thereof, inclusive.

V.

Petitions for removal, page 43 to 48, thereof, inclusive.

VI.

Bond on removal, pages 49 and 50 thereof.

VII.

Supplemental petition for removal, page 61 to 63 thereof, inclusive.

VIII.

Order denying motion to remand, page 64 thereof.

IX.

Demurrer of this defendant, page 65 thereof.

X.

Order overruling demurrers, on page 68 thereof.

XI.

Deposition of Ed. H. Reid, page 79 to 83 thereof, inclusive.

XII.

Depositions of O. W. Eaton and John R. Bonson, page 89 to 118, thereof, inclusive.

XIII.

Deposition of Geo. W. Hawkes, page 85 to 88 thereof, inclusive.

XIV.

Transcript of testimony and exhibits, page 121 to 163 thereof, inclusive.

XV.

Findings and decision, page 173 to 175 thereof, inclusive.

XVI.

Judgment, pages 176 and 177 thereof, inclusive.

XVII.

Proceedings on severance, pages 181 to 183 thereof, inclusive.

XVIII.

Petition for writ of error, pages 189 and 190 thereof.

XIX.

Assignment of errors, page 191 to 196 thereof, inclusive.

XX.

Order for filing bond, pages 197 and 198 thereof.

XXI.

Order allowing writ of error, pages 199 and 200 thereof.

XXII.

Bond on writ of error, pages 201 and 202 thereof.

XXIII.

Writ of error, page 203 thereof.

XXIV.

Citation, page 204 thereof.

XXV.

Clerk's certificate to transcript, page 205 thereof.

NEAL & KINYON,

MORRISON PENCE,

JESSE W. LILIENTHAL,

Attorneys for Plaintiff in Error.

Dated March 31, 1906.

[Endorsed]: 1320. In the United States Circuit Court of Appeals, for the Ninth Circuit, American Bonding Company of Baltimore, a corporation organized and existing under and by virtue of the laws of the State of Maryland, Plaintiff in Error, vs. William Finney, late

Sheriff of Blaine County, Idaho, Defendant in Error.
Statement of Errors, and designation of Record to be
Printed. Filed March 31, 1906. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

AMERICAN BONDING COMPANY
OF BALTIMORE (a Corporation),
Plaintiff in Error,

vs.

WILLIAM FINNEY, Late Sheriff of
Blaine County,
Defendant in Error.

Designation of Additional Record to be Printed.

To the Clerk of the Above-named Court and to the Plaintiff in Error and Its Attorneys of Record, Neal & Kinyon, Morrison & Pence, Jesse W. Lilienthal:

You will please take notice that the defendant in error, pursuant to subdivision 7 of rule 23 of the above court files with said clerk a statement of additional record to be printed, to wit: All and the entire portion of the record not specified by the plaintiff in error, so as to make the record complete when printed, as transmitted by the clerk of the lower court, calling especial

attention to the affidavits in support of the petitions on removal and the judgment-roll in the State court.

W. E. BORAH,

Attorney for Defendant in Error.

Service admitted by copy this — day of April, 1906.

-----,

Attorneys for Plaintiff in Error.

[Endorsed]: No. 1320. In the United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. William Finney, Late Sheriff of Blaine County, Idaho, Defendant in Error. Designation of Additional Record to be Printed. Filed Apr. 7, 1906. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

AMERICAN BONDING COMPANY	}
OF BALTIMORE (a Corporation),	
Plaintiff in Error,	
vs.	
WILLIAM FINNEY, Late Sheriff of	}
Blaine County, Idaho,	
Defendant in Error.	

Order Extending Time to Docket Cause.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-entitled cause in this court be, and the same is hereby, enlarged

and extended from the 30th day of December, 1905, to and including the first day of March, 1906.

Dated December 28th, 1905.

JAS. H. BEATTY,
Judge.

[Endorsed]: In the United States Circuit Court of Appeals, Ninth Circuit. American Bonding Company of Baltimore, Plaintiff in Error, vs. William Finney, Late Sheriff, etc., Defendant in Error. Order Enlarging Time to Docket Cause. Filed Feb. 28, 1906. F. D. Monekton, Clerk.

*In the United States Circuit Court of Appeals, for the
Ninth Circuit.*

AMERICAN BONDING COMPANY }
OF BALTIMORE (a Corporation), }
Plaintiff in Error, }
vs. }
WILLIAM FINNEY, }
Defendant in Error. }

Order Extending Time to Docket Cause.

Good cause appearing therefor, it is ordered that the plaintiff in error herein, the American Bonding Company of Baltimore, may have to and including April 1,

1906, wherein to file the record herein, and docket this case with the clerk of this court.

WM. B. GILBERT,
Judge of said Court.

Dated February 28, 1906.

[Endorsed]: In the United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. William Finney, Defendant in Error. Order Extending Time. Filed Feb. 28, 1906. F. D. Monckton, Clerk.

[Endorsed]: No. 1320. United States Circuit Court of Appeals for the Ninth Circuit. American Bonding Company of Baltimore, etc., vs. William Finney, Late Sheriff of Blaine County, Idaho. Two Orders Extending Time to Docket Cause. Refiled March 31, 1906. F. D. Monckton, Clerk.

In the District Court of the Third Judicial District of the State of Idaho, in and for Ada County.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Maryland, and THE FLATO COM-
MISSION COMPANY, a Corporation,
Organized and Existing Under and by
Virtue of the Laws of the State of
Nebraska,

Defendants.

Complaint.

Comes now the plaintiff, and for cause of action against the plaintiff alleges:

1. That the defendant, the American Bonding Company of Baltimore now is, and during all the times hereinafter mentioned has been, a corporation organized and existing and doing business under and by virtue of the laws of the State of Maryland, and doing business also in the State of Idaho; that the defendant, the Flato Commission Company, is a corporation organized and existing under and by virtue of the laws of the State of Nebraska.

2. That the plaintiff during all the times mentioned in the complaint and while performing the acts and services in said complaint referred to was the duly elected and qualified sheriff of Blaine County, Idaho.

3. That on or about the 24th day of July, 1902, the above-named plaintiff, as sheriff of Blaine County, at the instance and request of the above-named defendant, the Flato Commission Company, and upon affidavit and notice duly filed as required by the statutes of the State of Idaho relative to the foreclosure of a chattel mortgage, took possession of certain personal property, to wit: 5,469 head of sheep, wethers, said sheep being branded with paint on wool as follows, quarter circle G, the same being what is known as the Cowden sheep, and being the same sheep hereinafter described and referred to in a certain bond, a copy of which is hereafter attached; that after the said plaintiff had taken possession of said sheep at the instance and request of the Flato Commission Company the said sheep and all of them were claimed by Ralph Cowden as his separate and individual property.

4. That in order that the said plaintiff might hold said sheep, retain possession of the same, and make sale thereof to satisfy the mortgage of the Flato Commission company under which the same had been taken and upon demand and at the request of this plaintiff, the said Flato Commission Company and the said American Bonding Company of Baltimore made and executed and delivered to the plaintiff their certain bond of indemnity in writing conditioned that the said Flato Commis-

sion Company and the said American Bonding Company of Baltimore would indemnify and save harmless the said William Finney, sheriff, from all damages, expenses, costs and charges and against all loss or liability which the said sheriff, his heirs, executors or administrators should sustain for or by reason of the taking into his possession and retention and sale of said property, said property being the same property above described, and which was afterwards involved in the suit in this complaint referred to. A copy of said bond showing more particularly the terms and conditions of said bond is hereto annexed, made a part of this complaint and referred to as Exhibit "A." That the said bond is signed and executed in the name of the American Bonding and Trust Company of Baltimore City, Maryland. That said American Bonding and Trust Company of Baltimore City, Maryland, is the same corporation and person as the above-named defendant, the American Bonding Company of Baltimore, said company having changed its name by authority of the legislature of Maryland from the American Bonding and Trust Company of Baltimore City, Maryland, to the American Bonding Company of Baltimore, said company sometimes executing its instruments in one name and sometimes in the other.

5. That upon the execution and delivery of said bond of indemnity, and in consideration of giving the same, the said plaintiff retained possession of said sheep and sold the same at the instance and request and under the authority and advice of the said Flato Commis-

sion Company and the American Bonding Company of Baltimore.

6. That thereafter the said Ralph Cowden commenced an action against this plaintiff as sheriff of Blaine County in the District Court of the Third Judicial District of the State of Idaho, in and for Blaine County; that thereafter the said suit was transferred for trial to Canyon County in the above-named court and district. That said plaintiff herein appeared as defendant in said suit, and contested the same, and did so at the instance and request and with the full knowledge, notice and consent and by the advice of the said Flato Commission Company and the American Bonding Company of Baltimore above named. That thereafter the cause came duly on for trial, and that such proceedings were had that upon the 17th day of June, 1903, the Court made its findings of fact and conclusions of law, deciding and holding thereby that the plaintiff was entitled to the personal property heretofore described and to the return thereof or the value thereof, amounting, principal and interest, to the sum of \$8,798.24 and for costs, and that upon such findings of fact and conclusions of law judgment of said Court was duly and regularly entered, wherein and whereby it was ordered, adjudged and decreed that the said Ralph Cowden have judgment against the defendant therein, plaintiff herein, William Finney, sheriff, for the return of said property or for the value thereof in the sum of \$8,798.24 and for costs of suit amounting to \$250. That said judgment bears date June 17, 1903; that thereafter an appeal was duly taken

by this plaintiff to the Supreme Court of the State of Idaho, and thereupon such proceedings were had that upon the 4th day of February, 1904, the said judgment herein referred to was by the Supreme Court of the State of Idaho duly and regularly affirmed, and that said judgment remains unsatisfied and unpaid and is a liability against this defendant. That by reason of said judgment aforesaid and the affirmation of the same by the Supreme Court of the State of Idaho, this plaintiff is liable to the said Ralph Cowden in the sum of \$8,798.24 principal and interest, together with costs amounting to \$250, with interest on said amount at the rate of seven per cent per annum from June 7, 1903. That plaintiff herein has demanded payment of the same of the said defendants, and that they have neglected and refused to pay for the same.

7. That the conditions of said indemnity bond, a copy of which is set forth as Exhibit "A," have been broken, and the defendants are liable to this plaintiff for the same in the amount aforesaid under and by virtue of the terms and conditions of said bond in the sum of \$8,798.24 principal and interest, and the further sum of \$250 costs, with interest on each of said amounts at the rate of seven per cent per annum from June 7, 1903.

Second Cause of Action.

For a further and second cause of action against the defendants the plaintiff alleges:

1. The plaintiff refers to paragraphs 1, 2, 3, 4, 5, 6, and 7 of the first cause of action and adopts them as

allegations in the second cause of action the same as if they were fully set forth.

2. That this plaintiff, in contesting said action herein referred to, has paid out, contracted for and become liable for charges, expenses and costs in traveling and attorney fees the following sums: For traveling expenses, \$42.90; for attorneys' fees contracted and agreed to be paid in the matter of bringing suit herein, \$500. That said amounts are due and unpaid, and that the defendants neglect and refuse to pay the same, although requested so to do. That the conditions of said indemnity bond, a copy of which is set forth here as Exhibit "A," has been broken, and that the defendants are liable to this plaintiff for the sum and amount of \$542.90 for costs, charges and expenses covered by the terms and conditions of said bond.

Wherefore plaintiff prays judgment against the above-named defendants and each of them for the sum of \$9,048, with interest thereon at the rate of seven per cent per annum from June 17, 1903, and for the further sum of \$542.90 for costs of this suit and for all proper relief.

W. E. BORAH,
Attorney for Plaintiff.

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That he is one of the attorneys in the above-entitled action, that he has read the above and foregoing complaint, knows the contents thereof, and that the facts

stated therein are true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the plaintiff herein is absent from the county where the attorney resides and where the suit is filed.

W. E. BORAH,

Subscribed and sworn to before me this 13th day of May, 1904.

[Seal]

JOHN J. BLAKE,

Notary Public.

Exhibit " A. "

INDEMNITY BOND OF FORECLOSURE OF CHATTEL MORTGAGE.

Know all men by these presents, that we, the Flato Commission Co. of Omaha, Nebraska, as principal, and the American Bonding and Trust Company, of Baltimore, Md., as surety, are each held and firmly bound unto William Finney, sheriff of Blaine County, State of Idaho, in the sum of (\$10,000) Ten Thousand Dollars, lawful money of the United States, to be paid to William Finney, sheriff or his certain attorney, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22d day of July, 1902.

Whereas, under and by virtue of an affidavit on the foreclosure of a chattel mortgage given by one R. L. Shaw to the above-named Flato Commission Company, and the notice required by the statutes of Idaho for the foreclosure of chattel mortgages, directed and delivered to the said William Finney, sheriff of Blaine County, the said sheriff was directed to take into his possession the said mortgaged property, and to sell the same, and the said sheriff did thereupon take into his possession the following described property, to wit: About twenty-six hundred wethers, more or less, branded with and other marks.

And whereas, upon the taking of said sheep, other persons or person claimed the said property as their own and

Whereas, the said Flato Commission Company, notwithstanding said claim, requires the said William Finney, sheriff, that he shall retain said property in his possession and sell the same,

Now, therefore, the condition of this obligation is such that if the said Flato Commission Company of Omaha, and the American Bonding and Trust Company of Baltimore City, Md., sureties, their heirs, executors, administrators or successors, or either of them, shall well and truly indemnify and save harmless the said William Finney, sheriff, his heirs, executors and administrators, of and from all damage, expense, cost and charges, and against all loss and liability which he, the said sheriff, his heirs, executors or administrators shall sustain or in anywise be put for by reason of the taking into his

possession, retention and sale of said property, claimed as aforesaid, then the above obligation to be void; otherwise to remain in full force and virtue.

THE FLATO COMMISSION CO.,

By ED H. REID,

Director, Agent and Representative.

THE AMERICAN BONDING AND TRUST COMPANY OF BALTIMORE CITY,

By H. E. NEAL,

Vice-Prest.

Attest: CHAS. F. NEAL,

Asst. Secty.

[Endorsed]: No. 239. District Court, Third Judicial District, County of Ada, State of Idaho. William Finney, Plaintiff, vs. American Bonding Co. et al., Defendants. Complaint. Filed May 13th, 1904, 2:30 P. M. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk. W. E. Borah, Attorney for Pltff. Filed Sept. 12th, 1904. A. L. Richardson, Clerk.
(Caption Omitted.)

Summons.

The State of Idaho, Sends Greetings to the above-named Defendants.

You are hereby required to appear in an action brought against you by the above-named plaintiff in the District Court of the Third Judicial District, State of Idaho, in and for the County of Ada and to answer the complaint filed therein within ten days (exclusive of

the day of service) after the service on you of this summons, if served within this county; or if served out of this county, but in this district, within twenty days; otherwise within forty days. The said action is brought to recover from the defendants the sum of \$9,048.00, on a certain indemnity bond made and entered into between the Flato Commission Company and the American Bonding and Trust Company of Baltimore City, to indemnify and save harmless the plaintiff herein, while performing certain duties as sheriff of Blaine County, Idaho, in taking into his possession, retaining and selling certain personal property mentioned in plaintiff's complaint, with interest on said sum of \$9,048.00 at 7% per annum from June 17, 1903, for which sum plaintiff has become liable under the judgment of the district court of the Third Judicial District of Idaho, in and for Canyon County, in the case of Ralph Cowden vs. William Finney, which judgment was affirmed by the Supreme Court of Idaho, together with \$542.90 costs and disbursements sustained by plaintiff in said action, with interest thereon at 7% per annum from June 17, 1903; for plaintiff's costs in this action and for all proper relief; all of which more fully appears in plaintiff's complaint, a copy of which is served herewith, hereby referred to and made a part hereof.

And you are hereby notified, that if you fail to appear and answer the said complaint, as above required, the said plaintiff, will take judgment for the sum demanded in the complaint, to wit: \$9,590.90 with 7% interest thereon from June 17, 1903, and costs of suit.

Given under my hand and the seal of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada this 13th day of May, in the year of our Lord one thousand nine hundred and four.

[Seal]

W. L. CUDDY,
Clerk.

By Otto F. Peterson,
Deputy Clerk.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 239. Summons. Wm. Finney, Plaintiff, vs. American Bonding Company of Baltimore, et al., defendants. Filed May 20, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. W. E. Borah, Attorney for Plaintiff. Filed Sept. 12, 1904. A. L. Richardson, Clerk.

Sheriff's Office,
County of Ada—,ss.

I hereby certify that I received the annexed Summons on the 13th day of May, 1904, and personally served the same on the American Bonding Company of Baltimore, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, by delivering to and leaving with Charles F. Neal, Statutory Agent of said American Bonding Company and Flato Commission Company in the County of Ada, State of Idaho, on the 17th day of May, 1904, a copy

of said summons together with a copy of the complaint in the action referred to in said summons.

Dated this 20th day of May, 1904.

J. D. AGNEW, Jr.,
Sheriff of Ada County,
By Elias Marsters,
Deputy.

Sheriff's Fees; \$2.35.
(Caption Omitted.)

Notice of Petition for Removal.

To Hon. W. E. Borah, Attorney for Plaintiff:

You will please take notice that on the petition and bond, and the affidavit of Charles F. Neal, copies of which are herewith upon you served, the originals of which have been filed in the office of the Clerk of the District Court for the Third Judicial District of the State of Idaho in and for Ada County, and upon the summons, appearance and pleadings in said action, a motion will be made by the undersigned, on the 28th day of May, A. D. 1904, at two o'clock P. M. or as soon thereafter as counsel can be heard, at the courtroom in the courthouse in the said County of Ada, and will move that the said Court grant the said petition, and that said bond be accepted, and that said Court proceed no further in this suit.

NEAL & KINYON,
Attorneys for Defendant.

Boise, Idaho, May 27, 1904.

Due service of the within notice, and copies referred to herein, accepted this 27th day of May, 1904.

W. E. BORAH,
Attorney for Plaintiff.

Without waiver of his rights in the premises.

(Caption Omitted.)

Petition for Removal of the American Bonding Company
of Baltimore.

To the Honorable GEORGE H. STEWART, Judge of
the District Court for the Third Judicial District of
the State of Idaho, Within and for the County of
Ada:

Your petitioner, The American Bonding Company, appearing especially herein for the sole purpose of this application only, respectfully shows unto the Court:

1st. That this defendant, the American Bonding Company of Baltimore, is a nonresident of the State in which said suit was brought, to wit, the said State of Idaho, and is a corporation organized under the laws of the State of Maryland.

2d. That the defendant, the Flato Commission Company, is a nonresident of the State in which said suit was brought, to wit, the said State of Idaho, and is a corporation organized under the laws of the State of Nebraska.

That service of summons has not been made upon said defendant, as will more fully appear by the affidavit of Charles F. Neal hereto attached and made a part hereof.

3d. That plaintiff was, at the time of bringing said suit, and still is, as this petitioner avers, a resident and citizen of the State of Idaho.

4th. That the matter and amount in dispute in said suit exceeds exclusive of interest and costs, the sum of two thousand (\$2,000.00) dollars.

5th. That said suit is of a civil nature, and that plaintiff prays in his complaint in said suit, for judgment in the sum of \$9,048.00 with interest thereon at the rate of seven per cent per annum from June 17th, 1903, and for the further sum of \$542.90 for costs of this suit, against the American Bonding Company of Baltimore as surety, upon an alleged bond in the sum of ten thousand (\$10,000.00) dollars, given to the plaintiff herein as sheriff of Blaine County, Idaho, under and by virtue of an affidavit on the foreclosure of a chattel mortgage given by one R. L. Shaw to the Flato Commission Company, defendant herein, and this defendant, the American Bonding Company of Baltimore, is the real party in interest herein, and the Flato Commission Company is, as this defendant believes, and therefore alleged, wholly insolvent and therefore not a real party in interest herein.

6th. That the controversy in suit is wholly between citizens of different states, as aforesaid, and your petitioner offers herewith a good and sufficient surety for their entering in the Circuit Court of the United States for the District of Idaho, on the first day of its next session, a copy of the records in this suit, and for paying all costs that may be awarded by said Circuit Court, if said

Court shall hold that this suit was wrongfully or improperly removed thereto.

7th. And your petitioner prays this Honorable Court to proceed no further herein, except to make an order of removal of this suit to said Circuit Court of the United States, to accept the said surety and bond, and to cause the record herein to be removed into said Circuit Court of the United States for the District of Idaho, and your petitioner will ever pray.

THE AMERICAN BONDING COMPANY OF
BALTIMORE.

By NEAL & KINYON,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

Charles F. Neal being first duly sworn, deposes and says: That he is an attorney and counselor of the Supreme Court of Idaho, and a member of the firm of Neal & Kinyon, who are the attorneys for the defendant in the above-entitled action, and has full authority to act for defendant in said matters; that he has read the above and foregoing petition, and that the same is true and correct; that his knowledge of the matters set forth in said petition is based in part upon his personal knowledge, and upon letters and dates furnished him by the defendant herein.

That none of the defendants herein are now in Ada County, Idaho, the place of residence of affiant.

CHARLES F. NEAL.

Subscribed and sworn to before me this 26th day of
May, 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

(Caption Omitted.)

Affidavit of Charles F. Neal.

State of Idaho,

County of Ada,—ss.

Charles F. Neal, being first duly sworn, deposes and says that he is the Charles F. Neal, upon whom service was made as the designated, authorized agent of the Flato Commission Company defendant herein, in and for the State of Idaho.

He further states that he has never been appointed such agent, to the best of his knowledge and belief. Further, that he has made an examination of the records in the office of the Secretary of State in and for the State of Idaho; also in the office of the clerk of the District Court in and for the County of Ada, State of Idaho, and there is no designation of himself as the authorized agent of the Flato Commission Company at either of the above offices.

Further, that there is no designation of any authorized agent of the Flato Commission Company at either of the above offices.

He further states that he is not in any way authorized to accept or receive service, or do any act or things, for,

or on behalf of, defendant, the Flato Commission Company.

CHARLES F. NEAL.

Subscribed in my presence and sworn to before me this 26th day of May, A. D. 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

Bond on Removal.

Know all men by these presents, that we, The American Bonding Company of Baltimore, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and having a principal place of business in Baltimore, Maryland, as principal and The United States Guaranty Company, having an office and usual place of business at Boise City, in Ada County, State of Idaho, as surety, are held and firmly bound unto William Finney, late sheriff of Blaine County, Idaho, in the penal sum of five hundred (\$5,000.00) dollars, for the payment whereof, well and truly to be made unto the said William Finney, late sheriff of Blaine County, Idaho, his successors and assigns, we bind ourselves, our and each of our successors, representatives and assigns, jointly and severally firmly by these presents.

Upon these conditions, that, whereas, the said American Bonding Company of Baltimore, having petitioned the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, Idaho, held in and for the County of Ada aforesaid, for the removal of

a certain cause therein pending, wherein the said William Finney, late sheriff of Blaine County, Idaho, is plaintiff, and the American Bonding Company of Baltimore, a corporation organized and existing under and by virtue of the laws of the State of Maryland; and the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska, are defendants, to the Circuit Court of the United States for the District of Idaho.

Now, if the said American Bonding Company of Baltimore, shall enter in the said Circuit Court of the United States on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by the said Circuit Court of the United States, if said Court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation to be void; otherwise to remain in full force and effect.

In witness whereof the parties hereto have hereunto set their hands and seals this 27th day of May, A. D. 1904.

[Corporate Seal]

AMERICAN BONDING COMPANY OF BALTI-
MORE,

Principal.

By CHARLES F. NEAL,
General Agent and Attorney.

THE U. S. FIDELITY & GUARANTY CO.,

By C-----.

(Caption Omitted.)

Demurrer.

The defendant, the American Bonding Company of Baltimore, demurs to plaintiff's complaint, on the following grounds:

1. That the plaintiff has not legal capacity to sue.
2. That there is defect of parties defendant, for the reason that there is no service of summons upon the defendant, the Flato Commission Company.
3. That the complaint does not state facts sufficient to constitute a cause of action.

THE AMERICAN BONDING COMPANY OF
BALTIMORE,

By NEAL & KINYON,
Its Attorneys.

Due service of the within demurrer, with copy, accepted this 27th day of May, 1904.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Omitting title and caption. Demurrer filed May 27th, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk. Neal & Kinyon, Attys. for Defendants. Filed Sept. 12th, 1904. A. L. Richardson, Clerk.

The foregoing six pages consisting of copy of notice of petition for removal, petition for removal and removal bond accompanying same, are in the originals bound in three separate wrappers each endorsed as follows:

power to act for defendant in said matter; that he has read the above and foregoing plea to jurisdiction and that the same is true and correct; that his knowledge of the matters set forth in said petition is based in part on his own personal knowledge and upon letters and data furnished him by the defendant herein; that none of the defendants herein are now in Ada County, Idaho, the place of residence of affiant.

JAMES H. HAWLEY.

Subscribed and sworn to before me this 10th day of September, 1904.

O. ADAMS,
Notary Public.

I hereby certify that in my opinion the foregoing plea to the jurisdiction of the Court is well founded in point of law.

JAMES H. HAWLEY,
Counsel for Defendant, Flato Commission Company.

(Caption and Title Omitted.)

**Affidavit of Charles F. Neal and James C. Dahlman Attached
to Plea of Jurisdiction of Flato Commission Company.**

Filed in Case No. ——. U. S. Circuit Court District of
Idaho, September 12th, 1904.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn, deposes and says that he is the Charles F. Neal, upon whom service

was made as the designated, authorized agent of the Flato Commission Company defendant herein, in and for the State of Idaho.

He further states that he has never been appointed such agent, to the best of his knowledge and belief. Further, that he has made an examination of the records in the office of the Secretary of State in and for the State of Idaho; also in the office of the clerk of the District Court in and for the County of Ada, State of Idaho, and there is no designation of himself as the authorized agent of the Flato Commission Company at either of the above offices.

Further, that there is no designation of any authorized agent of the Flato Commission Company at either of the above offices.

He further states that he is not in any way authorized to accept or receive service, or do any act or thing for, or on behalf of defendant, the Flato Commission Company.

[Seal]

CHARLES F. NEAL.

Subscribed in my presence and sworn to before me this 5th day of Sept., 1904.

L. V. HOUSEL,

Notary Public.

State of Nebraska,

County of Douglass,—ss.

James C. Dahlman, being first duly sworn, deposes and says that he is and has been for five years last past the duly authorized and acting secretary and for two years and five months the manager of the Flato Commission

Company, a Nebraska corporation, with its principal office at South Omaha, Nebraska.

He further states that he is the officer who has charge of the books and papers, and cares for the correspondence of the said Flato Commission Company, defendant herein. that he knows of his own knowledge that Charles F. Neal of Boise, Idaho, upon whom the purported service of summons was made in the above-entitled action as the duly authorized agent of defendant; the Flato Commission Company, is not and never has been the authorized agent of defendant the Flato Commission Company, and never has been authorized to do any business whatever for the said company as its agent.

Further that the Flato Commission Company, defendants herein has not and never has had an authorized statutory agent in the state of Idaho, as provided for in page 2653, Revised Statutes of 1887 of Idaho.

[Seal]

JAMES C. DAHLMAN.

Subscribed in my presence and sworn to before me this 18th day of August, 1904.

J. F. POWERS,
Notary Public.

Service of copy of above and foregoing admitted this 12th day of Sept., 1904.

W. E. BORAH.

Endorsement on Plea to Jurisdiction, and foregoing affidavits which were filed as one paper, as follows; (ommitting caption and title): No. ——. U. S. Circuit Court Central Division, District of Idaho. Plea to Juris-

diction of Flato Commission Company. Filed Sept. 12, 1904. A. L. Richardson, Clerk. Filed Sept. 22d, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

(Title and Caption Omitted.)

Order Remanding Cause.

On this day was announced the decision of the Court upon the motion to remand this cause heretofore argued and submitted, to the effect, that said motion be sustained and ordered that the above-entitled cause be, and the same is hereby, remanded to the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada.

It is further ordered that the original papers herein transmitted to this Court by the District Court aforesaid be returned to the said District Court, together with the plea to jurisdiction filed in this Court by the Flato Commission Company.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of order remanding cause No. 239, William Finney, late sheriff, etc. vs. American Bonding Company of Baltimore et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court in said district this 22d of September, 1904.

[Seal]

A. L. RICHARDSON,
Clerk.

By -----,
Deputy Clerk.

[Endorsed]: Order Remanding Cause. Filed Sept. 22, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

(Title and Caption Omitted.)

Order Overruling Demurrer.

The demurrer in the above cause having been argued and taken under advisement, the same is this day overruled. It is therefore ordered and adjudged that the demurrer in the above-entitled cause be and the same is hereby overruled.

GEO. H. STEWART,
Judge.

[Endorsed]: Order Overruling Demurrer. Filed Nov. 26, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.

(Title and Caption Omitted.)

Stipulation Extending Time to File Answer.

It is stipulated and agreed that the defendant, the American Bonding Company, may have until Monday,

the 12th day of December, 1904, to file and serve its answer herein.

W. E. BORAH,
Attorney for Plaintiff.

Stipulation. Filed Feby. 7th, 1905. W. L. Cuddy,
Clerk. By Otto F. Peterson, Deputy Clerk.

(Title and Caption Omitted.)

Answer.

Comes defendant, the American Bonding Company of Baltimore, and for its separate answer herein admits, alleges and denies as follows:

I.

Admits the allegations of paragraph 1 and 2 of said complaint.

II.

Answering paragraph 3 this defendant admits that defendant, the Flato Commission Company, on or about the 24th day of July, 1902, did file with plaintiff as sheriff of Blaine County, Idaho, an affidavit and notice in due form of law as required by the statutes of the State of Idaho, relative to the foreclosure of chattel mortgages under the process of "notice and sale," admits the execution of a bond, of which the copy annexed to said complaint is a substantial copy. Further says that this defendant has not information or belief sufficient to enable it to answer the other allegations of paragraph 3, to wit, that under and by virtue of the affidavit

and notice so executed by said Flato Commission Company, plaintiff took possession of 5,469 head of sheep, or any other number of sheep, branded as in said paragraph set out, or that all or any of said sheep were claimed by Ralph Cowden or by any other person as his separate and individual property, and therefore denies each and all of said allegations, and further alleges that if any sheep were taken by virtue of said writ which this defendant denies, they were the property of R. L. Shaw.

III.

Answering Paragraph 4 of said complaint this defendant admits the signing of the bond therein mentioned, and further answering denies that said bond was made, executed and delivered for the purposes in said paragraph set out, to wit: in order that plaintiff might hold said sheep, retain possession of the same and make sale thereto to satisfy the mortgage of the Flato Commission Company.

Further answering said paragraph 4, this defendant alleges the facts as to the execution of the same to be as follows: That when said affidavit and notice as mentioned aforesaid by plaintiff were delivered to plaintiff by the Flato Commission Company for service, in the manner provided by law, to wit, by levy, advertisement and sale, the plaintiff declined to serve the same by levying and taking into his possession the personal property therein described, or do any other thing whatever by law of him required until he had first been indemnified by defendant, the Flato Commission Company, with

an indemnity bond, conditioned as in said paragraph 4 set out.

That thereafter defendant, the Flato Commission Company, in order that it might have and receive at the hands of the said plaintiff, sheriff as aforesaid, the service and duty by him owing in the premises to the said Flato Commission Company, did, on said sheriff's demand, and refusal to act unless and until so indemnified, procure to be executed and delivered to the plaintiff as sheriff aforesaid a bond of indemnity conditioned in manner and form as aforesaid required by said plaintiff; that is to say, as in said paragraph 4 set out. That said bond of indemnity was not voluntary, but was coerced and extorted from said Flato Commission Company without authority of law, and in violation of law, and was so executed solely in order that said Flato Commission Company might require and have at the hands of plaintiff, as sheriff aforesaid, service and duty which he by law was required to render to said Flato Commission Company upon payment or tender of his lawful fees therefor, which fees were then and there tendered and paid, and said Flato Commission Company was entitled to said service without any other or further requirement or demand whatsoever on the part of said plaintiff, sheriff as aforesaid. That said bond was taken by said plaintiff as sheriff aforesaid under color of his office of sheriff as aforesaid, and is wholly unauthorized by law and is wholly without consideration and is void and illegal, wherefore, this defendant ought not to be charged and holden on the same.

IV.

Answering paragraph 5 defendant denies that said bond was executed for the consideration of the retention of possession of said sheep by plaintiff, as sheriff aforesaid; denies that said sheep were levied upon at the instance or request, or under the advice or authority of this defendant; and further answering alleges the fact with reference to the surroundings of the execution and giving of said bond are as set forth in paragraph 4 of this answer.

V.

Answering paragraph 6 of said complaint, this defendant says that he has not sufficient information or belief to enable it to answer the allegations of paragraph 6: That one Ralph Cowden had commenced an action against plaintiff as sheriff of Blaine County, Idaho, and had recovered judgment in the District Court of the Third Judicial District of Idaho, in and for Canyon County, Idaho, for the sum of \$8,787.24, and for costs amounting to \$250.00, and wherein it was ordered and adjudged that said Cowden have a return of the property described in said affidavit and notice, and so as alleged, claimed by said Cowden, or in lieu thereof his damage in the said sum of \$8,798.24 and costs in the sum of \$250.00, nor of any other judgment for return of property or damages or costs in said matters, nor of the affirmance of any such judgment, or any judgment in the premises, on appeal in the supreme Court of Idaho. Nor of the fact of plaintiff herein being liable to Ralph Cowden, in the sums as in said paragraph 6 alleged, or any other sum or

sums of money by reason of such alleged judgment; nor of there being any judgment as alleged by plaintiff growing out of the matters alleged in said complaint, and for this reason denies the same.

Further answering said paragraph 6 this defendant denies that plaintiff herein appeared in any such alleged suit, and contested the same at the instance or at the request, or with the full knowledge or any knowledge, or with notice to, or with the consent of, or by the advice of this answering defendant.

VI.

Answering paragraph 7 of the complaint herein, this defendant denies that the conditions of said indemnity bond have been broken; denies that this defendant is liable to plaintiff because of the execution of said alleged bond, and by virtue of the terms and conditions thereof in the sum of \$8,798.24, principal and interest, and the further sum of \$250.00 costs, with interest on said amounts as in said paragraph 7 alleged or in any other sum or sums.

VII.

Answering the allegations of paragraph I of the second cause of action of plaintiff's complaint, adopting the allegations of paragraphs 1, 2, 3, 4, 5, 6 and 7 of first cause of action as a part of the second cause of action, this defendant adopts his answer to the afore-said seven paragraphs comprising the first cause of action as fully as though they were fully in this paragraph repeated and set forth.

VIII.

Answering the allegations of paragraph 2 of second cause of action, this defendant says that it has not information or belief sufficient to enable it to answer the allegations of said paragraph 2, to wit: That plaintiff, in contesting said alleged action, referred to in the first cause of action set forth in said complaint, has paid out, contracted for and become liable for costs and expenses in traveling, and attorneys' fees in the total sum of \$542.90 as in said paragraph 2 set out, or any part thereof, and therefore denies the same.

of.

Second Defense.

For a further and second defense this defendant says that it adopts the allegations or paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of its answer herein as fully as though herein fully set out, and says that under said facts the bond sued on in this action is without valid consideration, was coerced and extorted from defendant, the Flato Commission Company, was so taken and required without authority of law; and contrary to both the statute and the policy of the law, and plaintiff is not entitled to recover thereon against this defendant.

Third Defense.

For a third and further defense this defendant says that the complaint herein does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

Wherefore, this answering defendant asks that this

action be dismissed as against it, and that it recover its costs herein expended.

NEAL & KINYON,
Attorneys for American Bonding Company.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys in the above-entitled action for defendant, the American Bonding Company of Baltimore, that he has read the foregoing answer, knows the contents thereof, and that the facts therein stated are true of his own knowledge except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that defendant, the American Bonding Company of Baltimore, is a corporation and absent from the county where the attorney resides and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 12th day of December, A. D. 1904.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: Answer. Filed Dec. 12, 1904. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk.

(Title and Caption Omitted.)

Motion to Quash Service of Summons.

Comes now the defendant, The Flato Commission Company, above named, and specially appearing for the purpose of this motion, and for no other purpose, moves to set aside and quash the service of the summons herein upon this defendant, upon the grounds and for the reasons:

1. That the pretended service of summons in this cause upon this defendant is not a legal or proper service of summons, or a service at all, in this; that Charles F. Neal mentioned in the return of the sheriff herein as the person upon whom said service was made in behalf of this defendant, and as the statutory agent thereof, was not and is not, and never was the agent or representative, either statutory or otherwise, of this defendant, and has never at any time acted as such, or been appointed as such agent or representative under the laws of the State of Idaho, or otherwise, as shown by the affidavits of Charles F. Neal and James C. Dahlman, and the certificate of the Secretary of the State of Idaho, a copy of each of which is herewith served and made a part hereof.

2. That this motion is based upon said summons, the return of the sheriff, the affidavits of Charles F. Neal and James C. Dahlman, attached to the plea to the jurisdiction filed herein and the certificate of the Secretary

of the State of Idaho, the originals of which are filed herein, and a copy of which is herewith served.

HAWLEY, PUCKETT & HAWLEY,
Attorneys for the Flato Commission Company, a Corporation.

(Title and Caption being Omitted.)

Affidavit of Charles F. Neal.

State of Idaho,
County of Ada,—ss.

Charles F. Neal, being first duly sworn according to law, deposes and says:

That during the day May 17, A. D. 1904, at my offices in the Sonna Building, and in room 305 of said building, Boise, Idaho, Elias Marsters, a then deputy marshal of Ada County, Idaho, served on me one copy of summons and one copy of compliant in the case of J. C. Mills, Jr., Late Sheriff of Boise County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore, a Corporation, organized and existing under and by virtue of the laws of the State of Maryland, and the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska; also one copy of summons and one copy of complaint in the case of William Finney, late sheriff of Blaine County, Idaho, plaintiff, against the same defendants, which cases were then pending in the District Court of the Third Judicial District of the State of Idaho in and for Ada County.

On this particular date I was the duly authorized statutory agent of the American Bonding Company of Baltimore, having been appointed under the provisions of section 2653 of the Revised Statutes of Idaho, as amended by an act approved March 10, 1903, and my appointment having been filed as required by law.

Mr. Elias Marsters first served the papers on me against the American Bonding Company of Baltimore, of which I acknowledged service in each of the above-entitled cases for the American Bonding Company of Baltimore. He then attempted to serve on me the copies of two summons and complaint against the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska as set out in the complaints in these actions. I then and there told deputy sheriff Elias Marsters that I was not the statutory agent of the Flato Commission, that I never had been the statutory agent of the Flato Commission Company, nor had I ever represented the Flato Commission Company in any capacity. Mr. Elias Marsters then asked me if I knew who was the statutory agent of the Flato Commission Company, to which question I answered that I did not know, but that as Messrs. Hawley & Puckett, attorneys of this city, had heretofore represented to my personal knowledge the Flato Commission Company as their attorney, in other suits, that they, Hawley & Puckett, could probably inform him who the statutory agent for this State is. Mr. Elias Marsters, deputy sheriff, left no papers with me other than one copy of summons and one copy of

complaint in each of the cases hereinabove described against the American Bonding Company of Baltimore, Maryland.

The foregoing copy of summons and complaint in the case of J. C. Mills, Jr., vs. American Bonding Company of Baltimore et al., and the copy of summons and complaint of William Finney vs. American Bonding Company of Baltimore et al., which were served on me as statutory agent of the American Bonding Company, were the only papers served on me, and the only papers left with me on the date in question, or at any other time by the said Elias Marsters, or any other person in connection with process in these cases.

And further affiant deposes and says that he has personally made a diligent search of the records in the office of the Secretary of State of the State of Idaho, and that he fails to find that the Flato Commission Company, a corporation organized under the laws of the State of Nebraska, and one of the defendants herein, had filed any authorization of statutory agent under the provisions of section 2653 of the Revised Statutes of the State of Idaho, as amended by an act approved March 10, 1903, or has it filed any papers whatever in the said office.

And further affiant saith not.

CHARLES F. NEAL.

Subscribed and sworn to before me this 31st day of January, A. D. 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

Certificate of Secretary of State.

STATE OF IDAHO,
OFFICE OF THE SECRETARY OF STATE.

I, Will H. Gibson, Secretary of State of the State of Idaho, and custodian of the records of corporations, do hereby certify: That I have made a diligent search of the records in my office, and fail to find that the

FLATO COMMISSION COMPANY,

a corporation reputed to be organized under the laws of the State of Nebraska, has complied with section 2653 of the Revised Statutes of the State of Idaho, as amended by an act approved March 10th, 1903, by filing in this department the articles of incorporation duly certified to by the proper authorities, and an instrument designating statutory agent and principal place of business within this state.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of the State.

Done at Boise City, the capitol of Idaho, this 27th day of January, in the year of our Lord one thousand nine hundred and five and of the Independence of the United States of America, the one hundred and twenty-ninth.

[Seal]

WILL H. GIBSON,
Secretary of State.

Motion to Quash.

Service accepted and motion waived.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Filed Feb. 1, 1905. W. L. Cuddy, Clerk.
By Otto F. Peterson, Deputy. Hawley, Puckett & Hawley, Attys. for Flato Com. Co., Defendants.

J. C. MILLS

vs.

AMERICAN BONDING CO. et al.,

and

WILLIAM FINNEY

vs.

AMERICAN BONDING CO. et al.,

} Civil Trial No. 25.

} Civil Trial No. 26.

Certified Copies of Certain Orders of District Court.

In these cases the motion of the defendant, the Flato Commission Co., to quash service of summons as to said Flato Commission Co., were sustained. Whereupon the defendant, American Bonding Co., presented its motions for the removal of the cases to the United States Court. The Court declined to rule on the motions for removal till some action is taken in the matter by the U. S. Court. Counsel for the plaintiffs duly excepted to the ruling of the Court in sustaining the motions of the defendant, the Flato Commission Co., to quash service of summons as to said Flato Commission Co.

State of Idaho,

County of Ada,—ss.

I, W. L. Cuddy, clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the

County of Ada, do hereby certify that the above and foregoing is a true and complete copy of the orders of the Court, made in the above-entitled cases on February 4, 1905, as the same appears of record in Journal "K" of the District Court, at page III.

Witness my hand and the seal of said Court this 7th day of February, A. D. 1905.

[Seal]

W. L. CUDDY,
Clerk District Court, Ada County, Idaho.
By Otto F. Peterson,
Deputy.

(Title and Caption Omitted.)

State of Idaho,
County of Ada,—ss.

I, W. L. Cuddy, clerk of the District Court in and for Ada County, Idaho, hereby certify that the original summons issued herein on the 13th day of May, 1904, is the only summons that has been issued out of my office at the time of the quashing of the service of summons as to the Flato Commission Company, defendant in the above-entitled action, and that no alias summons had issued out of said court at the time of the filing of petition and bond for removal in this cause under date of February 4, 1905.

[Seal]

W. L. CUDDY,
Clerk District Court.
By Otto F. Peterson,
Deputy.

(Title and Caption Omitted.)

**Petition for Removal of the American Bonding Company of
Baltimore.**

Your petitioner, the American Bonding Company of Baltimore, respectfully shows to this Honorable Court that it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees; and (2) that the controversy herein is between citizens of different States; that the plaintiff was at the time of the beginning of this action, and still is, a citizen of the State of Idaho, residing in Blaine County in said State; that your petitioner, the American Bonding Company of Baltimore, was, at the commencement of this action, and still is, a citizen of the State of Maryland, and of no other State residing at Baltimore City in said State; (3) that the Flato Commission Company, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of the State of Nebraska and of no other State, residing at South Omaha in said State; and that your petitioner, the American Bonding Company of Baltimore, desires to remove this suit before the trial thereof, into the next Circuit Court of the United States to be held in the District of Idaho, Central Division.

II.

Your petitioner, the American Bonding Company of Baltimore, further states that the Flato Commission Company has not now, and has never had, a statutory agent

for the purpose of service of summons, as required by section 2653, Revised Statutes of 1887, and acts amendatory thereof; and further represents and states to this court upon information and belief that the Flato Commission Company is not now, nor has it for more than two years last past, and since long prior to the beginning of action herein, been doing any business of any kind whatever in the State of Idaho, and has no resident agents or representatives therein, and has had no agents or representatives within the State of Idaho since long prior to the beginning of suit herein upon whom service of summons could be had, which fact has been well known to plaintiff herein, as this petitioner is informed and believes and therefore alleges on information and belief. Your petitioner, the American Bonding Company of Baltimore, further alleges that the return of service of summons in this case as served upon Charles F. Neal, as statutory agent of the Flato Commission Company is false and untrue and was made, as this petitioner is informed and believes, and therefore alleges on information and belief, made fraudulently, falsely and corruptly, with the intent and for the purpose of defeating the jurisdiction of the Circuit Court of the United States, and prevent a removal of said cause by this petitioner. Your petitioner alleges that in truth and in fact no service of summons was made upon Charles F. Neal as statutory agent of the Flato Commission Company, and that the return herein of service upon said Charles F. Neal as statutory agent of the Flato Commission Company is false and untrue, and was made and caused to be made for the sole purpose

and with the intent of preventing and defeating the right of this petitioner, the American Bonding Company of Baltimore, to remove this cause into the Circuit Court of the United States, for the District of Idaho, Central Division.

III.

Your petitioner further states that it heretofore, on the 27th day of May, 1904, and within the time allowed by law, filed a petition for removal of this cause to the United States Circuit Court for the District of Idaho, Central Division, and that said cause was removed to said Court, and that, thereafter, on or about the 13th day of September, 1904, said cause was, by the judge of the said Circuit Court of the United States within and for the State of Idaho, remanded to the District Court of the Third Judicial District of the State of Idaho in and for Ada County, for the reason that it appeared that there was in the record a service of summons upon Charles F. Neal as statutory agent of defendant the Flato Commission Company regular upon its face, and such defendant the Flato Commission Company had not joined in the removal of said cause, and for this reason said cause was held not to be a removable cause at said time and said cause was remanded to this Court for further proceedings; further that on the 4th day of February, 1905, upon the application of the Flato Commission Company, the said Flato Commission Company appearing specially for the sole purpose of quashing the service of summons so as aforesaid returned as made by serving summons upon the said Charles F. Neal as and for the duly authorized statu-

tory agent of said defendant the Flato Commission Company, and on the said 4th day of February, 1905, said Flato Commission Company was dismissed from said cause and said service of summons quashed and this cause is for the first time pending as against defendant, the American Bonding Company of Baltimore solely. In support of this application for removal petitioner refers to and makes a part hereof the following, to wit, the application for removal filed by petitioner under date of May 27th, 1904, in this Court, the plea to the jurisdiction of the United States Circuit Court filed by the Flato Commission Company in the United States Court and returned with the papers to this Court, the motion to quash service of summons as to the Flato Commission Company, filed by the Flato Commission Company herein with all affidavits, certificates and exhibits attached to said several papers and therein referred to. And your petitioner offers herewith a bond with good and sufficient surety conditioned according to law, for its entering in the Circuit Court of the United States for the District of Idaho, copy of the records in this suit, and for paying all costs that may be awarded by said Court if said Court shall hold that this suit is wrongfully and improperly removed thereto; and your petitioner prays this Honorable Court to proceed no further herein, except to make the order of removal required by law, and to accept such

surety bond and to cause the record herein to be removed to the said Circuit Court of the United States for the District of Idaho, and he will ever pray.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By NEAL & KINYON,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being duly sworn, deposes and says: That he is one of the attorneys for petitioner in above-entitled action; that he has read the above and foregoing petition for removal, knows the contents thereof, and that the facts stated therein are true of his own knowledge, except as to matters therein stated to be on information and belief and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the petitioner herein is absent from the county where the attorney resides and where the suit was filed.

B. F. NEAL.

Subscribed and sworn to before me this 4th day of
Feb., 1905.

[Seal]

W. L. CUDDY,
Clerk District Court.
By Otto F. Peterson,
Deputy.

[Endorsed]: Petition for Removal. Filed Feby. 4th, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

(Title and Caption Omitted.)

Bond on Removal.

State of Idaho,
County of Ada,—ss.

Know all men by these presents, that we, The American Bonding Company of Baltimore, Maryland, and The Flato Commission Company, a corporation organized and existing under the laws of the State of Nebraska, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are holders and stand firmly bound unto William Finney, in the penal sum of three hundred (\$300.00) dollars, for the payment whereof well and truly to be made unto the said William Finney, his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns jointly and firmly by these presents.

Upon condition nevertheless, that whereas the said American Bonding Company, and The Flato Commission Company have filed their petition in the District Court of the 3d Judicial District in and for Ada County, Idaho; for the removal of a certain cause therein pending, wherein the said William Finney, is plaintiff and the said American Bonding Company and the Flato Commission Company are defendants, to the United States District Court for the District of Idaho, Central Division.

Now, if the said American Bonding Company, and the Flato Commission Company shall enter in the said District Court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said Court of the United States, if said Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we, the said American Bonding Company and The Flato Commission Company, and The United States Fidelity and Guaranty Company have hereunto set our hands and seals this 4th day of February, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By NEAL & KINYON,
Attys.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

[Seal] By CLAUDE H. ROBERTS,
Its Attorney in Fact.

[Endorsed]: Bond for Removal. Filed February 4, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy.

Boise City, Idaho, February 4, 1905.

Eleventh Judicial Day of the District Court of the Third Judicial District of the State of Idaho, in and for Ada County. Present: Hon. GEORGE H. STEWART, District Judge, and the Officers of the Court.

Whereupon, among others, the following proceedings were had, to wit:

J. C. MILLS	}	Civil Trial No. 25.
vs.		
AMERICAN BONDING CO. et al.		

and

WILLIAM FINNEY,	}	Civil Trial No. 26.
vs.		
AMERICAN BONDING CO. et al.		

Trial.

In these cases the motion of the defendant, the Flato Commission Co., to quash service of summons as to said Flato Commission Co. were sustained. Whereupon the defendant American Bonding Co. presented its motions for the removal of the cases to the United States Court. The Court declined to rule on the motions for removal till some action is taken in the matter by the U. S. Court. Counsel for the plaintiff duly excepted to the ruling of the Court in sustaining the motions of the defendant, the Flato Commission Company, to quash service of summons as to said Flato Commission Company.

February 16, 1905.

J. C. MILLS, Jr.

vs.

AMERICAN BONDING CO. et al.

} Civil Trial No. 25.

Trial (Continued).

This cause came on for trial before the Court and a jury, Messrs. W. E. Borah and H. L. Fisher appearing as counsel for the plaintiff, Messrs. Neal & Kinyon appearing for the defendant, the American Bonding Co., and Messrs. Hawley, Puckett & Hawley, appearing for the defendant, the Flato Commission Co.

Counsel for the defendants, at this time, before the jury was impaneled, but after the case was called for trial, objected to going to trial at this time and filed their petitions and bond for removal to the Federal Court.

Whereupon the Court overruled the objection of defendants, and ordered that the trial of the cause be proceeded with, to which ruling of the Court counsel for defendants excepted.

The clerk under the direction of the Court proceeded to draw from the jury-box the names of twelve persons, one at a time, written on separate slips of paper and folded, to serve as a jury in this cause.

Gardner Adams, whose name was drawn from the jury-box, who was sworn on voir dire and examined for cause by counsel for plaintiff and defendants, was excused for implied bias.

J. H. Wickersham and H. C. Branstetter, persons whose names were drawn from the jury-box, who were sworn on voir dire, examined and passed for cause by counsel for both plaintiff and defendant, were excused by the Court on defendant's peremptory challenge.

Following are the persons whose names were drawn from the jury-box, who were sworn on voir dire, examined, passed for cause and accepted by counsel for both plaintiff and defendant, and who were sworn by the clerk to well and truly try said cause and a true verdict render therein, according to the law and the evidence, to wit:

Green C. Patton, George Stewart, James L. Yost, Jeff. Davis, Frank E. McMillan, Porter Crabb, S. F. Russell, John Hall, George Bayhouse, J. C. Pence, Charles Lyon and W. H. McMillan.

A statement of the cause was made to the jury by counsel for plaintiff, and thereupon J. C. Mills, Jr., Will H. Gibson, John A. Tucker, Ralph Cowden, H. S. Worthman and Charles F. Neal were sworn and examined as witnesses on the part of plaintiff, documentary and record evidence being introduced by plaintiff, and here plaintiff rests.

Counsel for the defendant, the American Bonding Co., at this time moved the Court to instruct the jury to return a verdict in favor of the defendants, for the reason that the evidence introduced was not sufficient to warrant a verdict in favor of plaintiff, which motion was overruled by the Court, to which ruling of the Court, counsel for defendant excepted.

Defendants declining to introduce any evidence, the cause was argued before the jury by H. L. Fisher, Esq., of counsel for plaintiff, and submitted to the jury for decision.

The Court, after instructing the jury, placed them in the charge of W. C. Lane, a bailiff first duly sworn, and they retired to deliberate upon their verdict.

On this same day came the jury into court, the counsel for plaintiff and defendants being present, the jury was called and all found present.

The Court asked the jury if they had agreed upon a verdict and they, through their foreman, presented to the Court their written verdict.

This verdict not being in due form, the Court after giving jury further instructions in writing, directed them to correct their verdict, and they again retired in the charge of the bailiff.

Counsel for plaintiff and defendant being present, the jury was returned into court, and being called, all were found present.

The Court asked the jury if they had agreed upon a verdict, and they, through their foreman, answered that they had, and presented to the Court their written verdict in the words and figures following, to wit:

*“In the District Court of the Third Judicial District of
the State of Idaho, in and for Ada County.*

J. C. MILLS, Jr., Sheriff,

Plaintiff,

vs.

AMERICAN BONDING CO., OF BAL-
TIMORE, and FLATO COMMIS-
SION CO.,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find for the plaintiff and assess his damages against the American Bonding Company of Baltimore at the sum of \$21,593.71.

J. C. PENCE,

Foreman.”

The verdict was recorded in the presence of the jury by the clerk and then read to them and they each confirmed the same.

The Court excused the jury from a further consideration of the case and till 10 A. M. February 17, 1905.

State of Idaho,

County of Ada,—ss.

I, W. L. Cuddy, Clerk of the District Court in and for the Third Judicial District, State of Idaho, within and for the County of Ada, hereby certify that the within and foregoing transcript, composed of ——— pages, and containing the complaint with all exhibits thereto, the

summons with return thereon, the notice of petition of removal, filed by the American Bonding Company of Baltimore, under date of May 27th, 1904, together with the petition for removal and all affidavits and showings thereto attached, and the bond for removal, filed by the said American Bonding Company of Baltimore, on the above day and date, the demurrer to the complaint filed by the American Bonding Company on the same day and date, the plea to jurisdiction, as to the Flato Commission Company, filed as shown by endorsement thereon, in the United States Circuit Court in the District of Idaho, filed on Sept. 12, 1904, and in this Court Sept. 22, 1904, together with all affidavits and other showings thereto attached, the order remanding said cause to this Court, entered Sept. 22, 1904, and filed in this Court on the same date, order overruling demurrer of defendant, American Bonding Company, stipulation for answer as to American Bonding Company, answer of the American Bonding Company, motion to quash service of summons, by the Flato Commission Company, filed January 31, 1905, with affidavits and certificates thereto attached, minutes of the court, under date of Feb. 4, 1905, and Feb. 16, 1905, relating to the foregoing case, petition for removal filed by the American Bonding Company of Baltimore, on Feb. 4, 1905, bond accompanying same, together with the filings of said several papers, in this office, as shown by endorsements on said civil papers, and that the within and foregoing are all of the files in the case of William Finney, Late Sheriff of Blaine County, Idaho, vs. The American Bonding

Company of Baltimore et al., except the petition for removal filed February 16, 1905, by the American Bonding Company of Baltimore, and also by the Flato Commission Company, on the same date, and the bond for removal filed jointly by said defendants on the same date, which original papers are herewith transmitted, and except all subpoenas issued in this action, and also all motions, affidavits, and other matters, relating to the question of costs, only.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 13th day of March, A. D. 1905.

[Seal]

W. L. CUDDY,

Clerk of the District Court.

By Otto F. Peterson,

Deputy.

[Endorsed]: No. 250. U. S. Circuit Court, Central Division, District of Idaho. Wm. Finney vs. American Bonding Company et al. Transcript. Filed March 13th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Petition for Removal of American Bonding Company of Baltimore.

Your petitioner, the American Bonding Company of Baltimore, respectfully shows to this Honorable Court that it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute

in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees; and (2) that the controversy herein is between citizens of different States; that the plaintiff was at the time of the beginning of this action, and still is, a citizen of the State of Idaho, residing in Blaine County, in said State; that your petitioner, the American Bonding Company of Baltimore was, at the commencement of this action, and still is, a citizen of the State of Maryland, and of no other State, residing at Baltimore City in said State; (3) that the Flato Commission Company, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of the State of Nebraska and of no other State, residing at South Omaha in said State; and that your petitioner, the American Bonding Company of Baltimore, desires to remove this suit before the trial hereof, into the next Circuit Court of the United States to be held in the District of Idaho, Central Division.

II.

Your petitioner, the American Bonding Company of Baltimore, heretofore on the 27th day of May, 1904, and within the time to plead, filed its petition for removal of this cause into the Circuit Court of the United States for the District of Idaho, which petition was denied by the Circuit Court of the United States for the District of Idaho, on or about the 13th day of September, 1904, that being a day of the next succeeding term of the Circuit Court, and said cause was by said Circuit Court remanded to the District Court in and for Ada County,

Idaho, for the reason that the Flato Commission Company, codefendant herein, was a party in said cause and had not joined in asking for the removal of the same and had been regularly served with summons as shown by the records of said court; that thereafter on the 1st day of February, 1905, the Flato Commission Company appeared specially in this court for the sole purpose of challenging the jurisdiction of this court over it and filed its motion to quash the service of summons which had been theretofore returned as made upon Charles F. Neal statutory agent of defendant, the Flato Commission Company, and which return of service appeared of record at the time of remanding of said cause from the Circuit Court of the United States as aforesaid, which said motion to quash was on the 4th day of February, 1904, argued in this court and sustained.

That immediately after the quashing of summons as against defendant, the Flato Commission Company, plaintiff herein in open court directed that alias summons issue for service upon said defendant The Flato Commission Company, and immediately thereafter and prior to the issuance of such alias summons, the defendant, the American Bonding Company of Baltimore, filed its petition for removal to this cause in the Circuit Court of the United States for the District of Idaho, which petition was as aforesaid filed on the 4th day of February, 1905, and was argued before the Hon. James H. Beatty, Judge of the Circuit Court of the United States, District of Idaho, on the 7th day of February, 1905, and said cause was remanded for the reason that

the proceedings before that Court show that there was process outstanding at the time of hearing as against the defendant the Flato Commission Company.

III.

Further, that on the said 7th day of February, 1905, the alias summons as aforesaid issued out of this court on the 4th day of February, 1905, for service upon defendant the Flato Commission Company, was served upon said defendant under and by virtue of the provisions of section 4144 of the Revised Statutes of Idaho and acts amendatory thereof by delivering a true copy of alias summons and copy of complaint herein to William Cuddy Auditor of Ada County, Idaho.

That this defendant, the American Bonding Company of Baltimore, has taken no other or further steps herein of any kind whatever except only the removal proceedings herein referred to, since the quashing of summons aforesaid on the 4th day of February, 1905, as to defendant the Flato Commission Company, and no action whatever in said cause since it came to the knowledge of said American Bonding Company of Baltimore that service of summons as aforesaid had been had upon the Flato Commission Company, except only to object to the jurisdiction of this court to try this cause prior to the expiration of the time in which defendant, the Flato Commission Company, was by law required to plead herein.

Your petitioner offers herewith a bond with a good and sufficient surety conditioned according to law, for

its entering in the Circuit Court of the United States for the District of Idaho, a copy of the records in this suit, and for paying all costs that may be awarded by said Court if said Court shall hold that this suit is wrongfully and improperly removed thereto; and your petitioner prays this Honorable Court to proceed no further therein, except to make an order of removal required by law, and to accept such surety bond and to cause the records herein to be removed to said Circuit Court of the United States for the District of Idaho, and he will ever pray.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By NEAL & KINYON,
Its Attorneys.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being duly sworn, deposes and says: That he is one of the attorneys for petitioner in above-entitled action; that he has read the above and foregoing petition for removal, knows the contents thereof, and that the facts stated therein are true of his own knowledge except as to matters therein stated to be on information and belief and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that the petitioner herein is absent from the county where the attorney resides and where the suit was filed.

B. F. NEAL.

Subscribed and sworn to before me this 13th day of February, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: Title and Caption Omitted. Petition for Removal. Filed Feb. 16, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Filed March 13, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Petition for Removal of the Flato Commission Company.

Your petitioner, the Flato Commission Company, respectfully shows to this Honorable Court that it is one of the defendants in this action, which is of a civil nature, and the matter and amount in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of interest and fees; and (2) that the controversy herein is between citizens of different states; that the plaintiff was at the time of the beginning of this action and still is a citizen of the State of Idaho, residing in Blaine county, in said State. That your petitioner, the Flato Commission Company, is a corporation and was at the commencement of this action and still is, a citizen of the State of Nebraska and of no other States, residing at South Omaha, in said State. That the American Bonding Company of Baltimore, defendant herein, is a corporation, and was at the commencement of this suit, and still is, a citizen of the State of Maryland, re-

siding at Baltimore in said State, and that your petitioner, the Flato Commission Company, desires to remove this suit before the trial court thereof into the next Circuit Court of the United States to be held in the District of Idaho.

II.

And your petitioner offers herewith good and sufficient surety for his entering in the Circuit Court of the United States for the District of Idaho, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said Circuit Court of the United States, if said Court shall hold that this suit was wrongfully and improperly removed thereto.

In support of this its application for removal petitioner attached hereto and makes a part hereof, a copy of summons served upon William Cuddy, Auditor of Ada County, Idaho, with affidavit of said Cuddy as to service made.

And your petitioner therefore prays that said surety and bond may be accepted; that this suit may be removed in the next Circuit Court of the United States to be held in the District of Idaho pursuant of the statutes of the United States in such cases made and provided, and that no further proceedings may be had herein in this court, and it will ever pray.

FLATO COMMISSION COMPANY.

By HAWLEY, PUCKETT & HAWLEY,

Its Attorneys.

State of Idaho,
County of Ada,—ss.

Jess Hawley, being first duly sworn, deposes and says that he is one of the attorneys for petitioner in above-entitled action, that he has read the above and foregoing petition for removal, knows the contents thereof and that the facts therein stated are true of his own knowledge except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that petitioner is absent from the county where the attorney resides and where the suit was filed.

JESS HAWLEY.

Subscribed and sworn to before me this 13th day of February, 1905.

OTTO PETERSON,
Clerk of Court.

[Endorsed]: Title of Caption Omitted. Filed Feb. 16, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk. Filed March 13th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Bond on Removal.

Know all men by these presents, that we, the American Bonding Company of Baltimore, Maryland, a corporation organized and existing under and by virtue of

the laws of the State of Maryland, and the Flato Commission Company, a corporation organized under and by virtue of the laws of the State of Nebraska, as principals, and the United States Fidelity and Guaranty Company, of Baltimore, Maryland, as surety, are holden and firmly bound unto William Finney, in the penal sum of five hundred (\$500.00) dollars, for the payment of which well and truly to be made unto the said William Finney, his heirs, representatives and assigns, we bind ourselves and each of our representatives and assigns, jointly and severally by these presents.

Upon the conditions, nevertheless, that whereas, the said American Bonding Company of Baltimore, and the said Flato Commission Company, have filed their respective petitions, in the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, for the removal of a certain action therein pending, wherein the said William Finney, is plaintiff and the said American Bonding Company of Baltimore and the said Flato Commission Company, are defendants, to the Circuit Court of the United States for the District of Idaho.

Now, therefore, if the said American Bonding Company of Baltimore and the said Flato Commission Company, shall enter in the said Circuit Court of the United States on the first day of the next succeeding term, a copy of the records in said suit, and shall well and truly pay all costs that may be awarded by the said Circuit Court of the United States, if the said Court shall hold that said suit was wrongfully or improperly removed

thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we, the said American Bonding Company of Baltimore, the said Flato Commission Company and the United States Fidelity and Guaranty Company have hereunto set their hands and seals this 16th day of February, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

BY NEAL & KINYON,

Its Attorneys,

FLATO COMMISSION COMPANY,

By HAWLEY, PUCKETT & HAWLEY,

[Corporate Seal]

Its Attorneys.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By CLAUDE H. ROBERTS,

Its Attorney in Fact.

[Endorsed]: Title and Caption Omitted. Removal Bond. Filed Feb. 16, 1905. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy Clerk. Filed March 13th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Affidavit of W. E. Borah.

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That he is one of the attorneys for the above-named plaintiff. That the time for the defendant, the American Bonding Company, to appear and answer under the summons in the above cause was May 27, 1904, and at said time the said American Bonding Company appeared and filed its general demurrer in said court. That thereafter the American Bonding Company through its attorneys on or about November 26, 1904, appeared in said court and argued the demurrer to the complaint, and that thereafter the Court rendered a written opinion upon said demurrer and overruled the same on or about November 26, 1904. That at the time of said appearance and argument of said demurrer no objection was raised to the jurisdiction of said state court. That after overruling said demurrer and without any objection upon the part of the American Bonding Company, said company through its attorneys entered into a written stipulation for the time in which to answer and thereafter having taken the time covered by said stipulation filed their answer upon December 12, 1904, in said court and did not object at said time to the jurisdiction of the court or file said answer under protest. That thereafter and on or about the 25th day of January, 1905, counsel for both plaintiff and

defendant being present in said court, the cause was by consent of both parties through their counsel set for trial February 4, 1905, and the said case was set without any protest upon the part of the American Bonding Company or objection to the jurisdiction of said Court. That thereafter and on or about February 17, 1905, the cause proceeded to trial before the Court and a jury and verdict in favor of the plaintiff resulted and judgment was duly entered. That notice of motion for new trial has been served and a bond for stay of execution has been duly filed by the American Bonding Company.

Affiant further states with reference to the Flato Commission Company that said Flato Commission Company was first served by serving Chas. E. Neal as statutory agent of the Flato Commission Company, such service being made on the 17th day of May, 1904. That thereafter and on the 31st day of January, 1905, the Flato Commission Company appeared by its counsel and moved to quash the summons on the ground that said Neal was not the statutory agent of the Flato Commission Company. That immediately upon said summons being quashed an alias summons was issued and the same was afterwards served upon the Flato Commission Company upon the --- day of February, 1905, by serving the auditor of Ada County, Idaho, as provided by the statutes of Idaho. That said Flato Commission Company has never made any appearance by demurrer or answer but has defaulted and that default was fully taken against the said Flato Commission Company in the said court upon the 6th day of March, 1905, and

judgment duly entered upon said default the 7th day of March, 1905. And further affiant saith not.

W. E. BORAH.

Subscribed and sworn to before me this 13th day of March, 1905.

[Seal]

JOHN J. BLAKE,

Notary Public.

[Endorsed]: Affidavit of W. E. Borah. Filed March 13, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Certificate of District Judge.

State of Idaho,
County of Ada,—ss.

I, George H. Stewart, Judge of the District Court of the Third Judicial District of the State of Idaho in and for Ada County, do hereby certify that the answer in the above-entitled cause was filed by the defendant, the American Bonding Company, on December 12, 1904, prior to which time said company had appeared by its attorneys and argued a demurrer which was overruled. That upon the 25th day of January, 1905, in open court, plaintiff and defendant, the American Bonding Company, being present by their attorneys said cause was called for setting and was set for trial by consent of both parties for February 4, 1905, and that no objection or protest was made at said time as to the jurisdiction of the Court or against proceeding to trial in

the State court. That prior to the time the present petition for removal was filed, the defendant, the American Bonding Company, had appeared by counsel and had consented that the cause be set for trial and had itself called for a jury trial in said case.

GEORGE H. STEWART,
District Judge.

[Endorsed]: Certificate of District Judge. Filed March 13th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Motion to Remand.

Comes now the plaintiff above named and moves that the above cause be remanded to the District Court of the Third Judicial District of the State of Idaho in and for Ada County, and for grounds of said motion says:

1. That it appears from the files and records in this case and from the alleged petition for removal that no ground exists for the removal of said cause from the District Court of the Third Judicial District of the State of Idaho in and for Ada County to the above court.

2. It appears from the alleged petition for removal and the petition and files and affidavits in this case that this Court has no jurisdiction of the above cause and that said suit was improperly removed to this court.

3. That it appears that all the defendants did not join in the petition for removal as required by the Stat-

utes and laws relative to the removal of causes from the State Court to the Federal Court.

4. That this court has no jurisdiction of this cause.

W. E. BORAH,

Attorney for Plaintiff.

[Endorsed]: Motion to Remand. Filed March 13, 1905. A. L. Richardson, Clerk.

(Caption and Title Omitted.)

Affidavit of B. F. Neal.

State of Idaho,

County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of counsel for the American Bonding Company, one of the defendants in the above-entitled action. That he is the counsel who prepared and filed the various papers for removal heretofore filed in this case, and is the B. F. Neal who argued the demurrer filed by said defendant to the complaint herein on Sept. 22, 1904, before the Hon. Geo. H. Stewart, Judge of the District Court in and for Ada County, Idaho.

Affiant further says that on the date of the argument of said demurrer this affiant orally objected to the jurisdiction of said court to hear said demurrer for the reason that there was in the files pleas to the jurisdiction of the Court over the Flato Commission Company and unacted upon, which said pleas were founded upon the alleged ground that no service of summons as required

by law had been had upon said defendant, and that the purported service was void and wholly unauthorized. That this defendant at such time and place and prior to the beginning of the argument on said demurrer objected to being required to argue said demurrer for the reason that if the Flato Commission Company was not a party to the suit brought in by due and proper service of summons that it was an election to proceed against the American Bonding Company only to require at that time arguments and rulings upon said demurrer, and that said cause was lawfully removed to the Circuit Court of the United States, District of Idaho, as to American Bonding Company. That notwithstanding affiant's said objections on behalf of American Bonding Company the Court required that they proceed and thereafter did rule upon said demurrer, overruling the same.

Affiant further says that thereafter in due and proper time the American Bonding Company filed its answer in said cause and that on the first day of January, A. D. 1905, term of the District Court in and for the Third Judicial District, State of Idaho, for Ada County, upon the calling of the docket this cause was set for hearing being No. in regular order of the jury cases for trial.

Affiant further says that at said time, nor any other time, did this affiant demand a jury. He further states that he did decline to waive a jury on behalf of the American Bonding Company.

Affiant further says that said causes were not at the opening of said court set for any date certain, but were

set for trial in their order as the civil jury cases appeared upon the civil trial docket and that they were on said docket cases Nos. 25 and 26 and were civil jury cases Nos. ——— and ———.

Affiant further says that on February 1st thereafter and before the trial of any of the civil jury cases the case of William Finney vs. American Bonding Company was set for trial to follow the Fred Bond and Jennie Daly murder cases, which date was supposed to be about Feb. 4, 1905. That said date was set without the consent of affiant or his co-counsel who represented the defendant, the American Bonding Company. That on said February 4th an application to quash service of summons which had been theretofore filed by the Flato Commission Company was sustained and then and thereby defendant, the American Bonding Company, became and was the only party defendants to said action. That affiant acting for said American Bonding Company then and there in open court immediately after the discharge of the said Flato Commission Company as a party defendant renewed its former application to have said case removed to the United States Circuit Court for the District of Idaho, as will more fully appear by the transcript filed herewith.

Affiant further says that the Hon. George H. Stewart declined to permit the papers to be removed to the Federal Court but stated that defendant, the American Bonding Company, might take a transcript of the papers and have the matter heard before Beatty. That thereafter by agreement between counsel for plaintiff and

affiant said cause was heard on the original papers in the Federal Court before the Hon. James H. Beatty, and that said cause was remanded by said court, for the reason that the record then before the said Court showed that there was a summons outstanding against the defendant, the Flato Commission Company, and that it had been duly served by serving upon W. L. Cuddy, Auditor of Ada County, Idaho, as by statute provided, and said Flato Commission Company was not a party to said removal petition, and for these reasons said Beatty caused said action to be remanded to the State Court as not removable.

Affiant further states that on the morning of February 9th, at the hour of opening court affiant was present in court when the Court announced that he would set the Finney and Mills cases against the American Bonding Company, said cases being the actions at bar, to follow the Jennie Daly case, and such entry was duly made of record in the journals of said court. That at said time in open court this affiant orally objected to the jurisdiction of said court to try this cause as to defendant, the American Bonding Company, at a date prior to the time when the defendant, the Flato Commission Company, would be compelled to answer or plead to the petitioner herein, and for the further reason that as to defendant, the American Bonding Company, said cause had been lawfully removed to the Federal Court.

Affiant further states that he relied upon the state-

ment of the said Court then and there made that if tried this case would not be tried until after the trial of the State of Idaho vs. Jennie Daly.

Affiant further says that he was notified by telephone on the night of February 15th at about eight o'clock P. M. that the case of Mills against the American Bonding Company et al. would be set for 10 o'clock February 16th, and the case of Finney vs. American Bonding Company et al., would immediately follow that. Affiant further says that immediately upon the opening of court on the morning of February 16, 1905, he made his objections, which he then and there asked the reporter to take down in writing and which are filed herewith, objecting to the jurisdiction of said court to try either the Mills or Finney case at said time or at all, for the reason that said cause was not at issue as to the Flato Commission Company; for the reason that said cause had been lawfully removed as to the American Bonding Company, and for other reasons set out in said objections as shown by the reporter's transcript herewith.

Affiant further says that at every stage of the trial of each of the above cases in the said Court this affiant and his co-counsel objected to the jurisdiction of the said Court to try these cases for the reason that they had been removed; for the reason that cause was not at issue as to the defendant, Flato Commission Company; for the reason that cause was taken up out of its order for trial and without proper notice to counsel for de-

fendant, and for other reasons which are set out more specifically in the reporter's transcript of said evidence.

Further affiant saith not.

B. F. NEAL.

Subscribed and sworn to before me this 18th day of March, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

March 22d, 1905.

Service of within affidavit by copy admitted without waiver of any rights.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Affidavit of B. F. Neal. Filed March 22d, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Proceedings Before District Court.

Be it remembered that on the 17th day of February, 1905, on the trial of the above-entitled cause before the Hon. Geo. H. Stewart, Judge of the Third Judicial District of the State of Idaho, with a jury, the following proceedings were had and entered of record, to wit:

Before the impaneling of the jury the following objection was made by the defendant:

Mr. NEAL.—The defendant, the American Bonding Co., objects to going to trial at this time for the reason that the Flato Commission Co. is the principal defend-

ant in this action, the American Bonding Co. being mere surety, and that this action is not at issue as to the defendant, the Flato Commission Co.

The defendant, the American Bonding Co., objects to going to trial at this time, for the further reason that this cause was on the 16th day of February, 1905, lawfully removed to the Federal Court for the District of Idaho by both the defendants herein, and this Court has no jurisdiction to try the same.

The COURT.—This case was set for February. Did you have your witnesses here at that time?

Mr. NEAL.—No, sir.

The COURT.—Did you ever have them here?

Mr. NEAL.—No, sir; they have been constantly under call so we could get them on telegraphic call.

The COURT.—The motion is overruled.

To which action and ruling of the Court, defendant, the American Bonding Co., by counsel, then and there duly excepted.

State of Idaho,
County of Ada,—ss.

W. L. Phelps, being first duly sworn, deposes and says: That he is the official stenographer of the Third Judicial District of the State of Idaho; that he took the trial of the above-entitled cause in shorthand, making an accurate report of same, and that the above is a true and correct copy of said proceedings in relation to the things therein stated.

W. L. PHELPS.

Subscribed and sworn to before me this 22d day of March, 1905.

[Seal]

W. L. CUDDY,
Clerk.

By Otto F. Peterson,
Deputy Clerk.

March 22d, 1905.

Service of within affidavit by copy admitted without waiver of any rights.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Proceedings Before District Court.
Filed March 22d, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Supplemental Petition for Removal.

Comes the American Bonding Company, petitioner herein, and for its additional and supplemental petition for removal herein, adopts, reaffirms and reiterates, each and every statement of its petition for removal filed in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, on the 16th day of February, 1906, and in this court on the 13th day of March, 1905, as well as also all proceedings therein referred to and made a part thereof, and for its supplemental petition herein further says:

I.

That after the due filing of its petition and bond for

removal on said 16th day of February, 1905, and after the due filing of the petition and bond for removal filed herein by the Flato Commission Company, the codefendant herein with this petitioner, and the due calling of the attention of the said Court, which was then and there in session, to said petitions and bonds, and the request on the part of each of said defendants that said District Court, in and for said Ada County, enter its order, that it proceed no further and that it enter its order that this petitioner and its codefendant, the said Flato Commission Company, had lawfully removed said cause to the Circuit Court of the United States for the District of Idaho, the said Court did then and there refuse to enter said order or any part thereof, and did notwithstanding said proceedings so as aforesaid taken by petitioner and its codefendant, the Flato Commission Company, order that said cause proceed to immediate trial as to this petitioner only, whereupon this petitioner filed its objections thereto, on the ground that said cause had been on that date lawfully removed to this court, and further objected and protested against said Court taking any proceedings whatever therein and demanded that said cause be continued until such time as its codefendant, the said Flato Commission Company, was by law required to plead and answer. That notwithstanding said objections and protests of this petitioner, said Court at the request of plaintiff in this cause, did proceed to impanel a jury and try this cause, notwithstanding the same was not at issue as to its codefendant, the Flato Commission Company, and notwithstanding the said Flato Commission Company had not answered or

pleaded to said complaint, and notwithstanding the time in which said Flato Commission Company was required by law to answer or plead had not expired, and did so try the same on the 17th day of February, 1905, over the said protest and objections of your petitioner as aforesaid, made and caused to be duly entered of record, and did submit said cause to said jury as aforesaid against the said protests and objections of this petitioner so as aforesaid made and caused to be entered of record and caused said action to be tried and verdict found as to this defendant only; that then and thereby by the acts of the said plaintiff, done as aforesaid over the protests and objections of this petitioner so as aforesaid made and entered, and with full knowledge of the fact that as to the Flato Commission Company, defendant herein as aforesaid, the time to answer or plead had not expired, the said plaintiff elected to proceed against this defendant separately, and then and thereby there was by the act of said plaintiff a severance of said cause of action as to the said defendants, and each of them, and then and thereby for the first time, this petitioner had a separate right of removal from the right of its co-defendant herein; and said cause was for the first time removable as to this petitioner, without the joint and concurrent action of its codefendant herein, which facts more fully appear by the records filed herein, as well as by the affidavits in support of petitioner filed by this petitioner herein.

Wherefore, petitioner prays that this Court take jurisdiction of this cause and issue its order to the District Court of the Third Judicial District of the State of

Idaho, in and for Ada County, that it proceed no further herein, and that all proceedings in said court be stayed as of this date until further order of this Court.

NEAL & KINYON, and
MORRISON & PENCE,
Attorneys for Petitioner.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys for petitioner in the above-entitled action; that he had read the above and foregoing supplemental petition for removal and knows the contents thereof; that the facts stated therein are true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes them to be true. That affiant makes this affidavit for the reason that petitioner is a corporation and is absent from the county where the attorney resides and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 23d day of March, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

[Endorsed]: Supplemental Petition for Removal.
Filed March 23d, 1905. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Tuesday, the 4th day of April, 1905. Present: Hon. JAS. H. BEATTY, Judge.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE et al.,

Defendants.

No. 250.

Order Denying Motion to Remand.

On this day was announced the decision of the Court upon the motion to remand this cause, heretofore argued and submitted, to the effect that said motion be denied. To which ruling plaintiff by his counsel excepted.

(Title and Caption Omitted.)

Demurrer of Defendant American Bonding Company.

Comes now the defendant, the American Bonding Company, and demurs to the complaint filed herein, and for cause of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Defendant, American Bonding Company.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

NEAL & KINYON,
MORRISON & PENCE,
Attorneys for Defendant.

Due service of the foregoing demurrer with copy admitted this 5th day of April, 1905, without waiver of right to file.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Demurrer of Defendant American Bonding Co. Filed April 5th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Demurrer of Defendant Flato Commission Company.

Comes now the defendant, the Flato Commission Company, and demurs to the complaint filed herein, and for cause of demurrer says:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

NEAL & KINYON,
MORRISON & PENCE

Attorneys for Defendant Flato Commission Company.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

NEAL & KINYON,
MORRISON & PENCE

Attorneys for Defendants.

Due service of the foregoing demurrer with copy admitted this 5th day of April, 1905, without waiver of right to file demurrer.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Demurrer of Defendant Flato Commission Co. Filed April 5th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Order Extending Time to File Bill of Exceptions.

It is hereby ordered and adjudged that the plaintiff in the above-entitled cause have sixty days after the trial of the above cause in which to prepare and file his bill of exceptions in the above-entitled cause, and it is further ordered that an exception is hereby allowed to

plaintiff in overruling the plaintiff's motion to remand the above cause to the State Court.

JAS. H. BEATTY,

[Endorsed]: Order extending Time, etc. Filed April 5th, 1905. A. L. Richardson, Clerk.

At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Saturday, the 8th day of April, 1905.
Present: Hon. JAS. H. BEATTY, Judge.

WILLIAM FINNEY, Late Sheriff, etc.,
Plaintiff,
vs.
AMERICAN BONDING COMPANY OF
BALTIMORE et al.,
Defendant. } No. 250.

Order Overruling Demurrers.

On this day was announced the decision of the Court upon the separate demurrers of the defendants, the American Bonding Company of Baltimore and the Flato Commission Company, heretofore argued and submitted, ordered that said demurrers each be and the same is hereby overruled, and that the Flato Commission Company be given until the 15th inst. to answer in said cause. An exception to the ruling on the demurrers is allowed.

(Title and Caption Omitted.)

Answer of Defendant Flato Commission Company.

Comes defendant, the Flato Commission Company, and for its separate answer herein admits, alleges and denies as follows:

I.

Admits the allegations of paragraphs one and two of said complaint.

II.

Answering paragraph three of plaintiff's complaint herein, this defendant admits that it did file with plaintiff as sheriff of Blaine County, Idaho, an affidavit and notice in due form of law, and as required by the statutes of the State of Idaho, relative to the foreclosure of chattel mortgages under the process of "notice and sale; admits the execution of a bond of which the copy annexed to said complaint is a substantial copy. Further answering said paragraph this defendant says that it has not information or belief sufficient to enable it to answer the other allegations of said paragraph three, to wit, that under and by virtue of the aforesaid affidavit and notice delivered to said plaintiff as aforesaid by this defendant, plaintiff took possession of certain personal property, to wit: 5,469 head of sheep, or any other number of sheep branded as in said paragraph set out, or that all or any of said sheep were claimed by Ralph Cowden, or by any other person as his separate and individual property, and therefore denies each and all of said allegations. And further alleges that if any sheep

were taken by plaintiff by virtue of said writ, then they were the property of A. L. Shaw, and were the property described in the chattel mortgage referred to in said complaint as having been given by said R. L. Shaw to this answering defendant, which said mortgage was given for value and without any design to hinder, delay or defraud creditor or creditors and were in good faith so executed by said Shaw.

III.

Answering paragraph four of plaintiff's complaint herein, this defendant admits the signing of the alleged bond herein mentioned, and further answering denies that said bond was made, executed and delivered for the purposes in said paragraph set out, to wit, in order that plaintiff might hold said sheep, retain possession of the same and make sale thereof, to satisfy the mortgage of this defendant. Further answering said paragraph four this defendant alleges the facts as to the execution of said bond to be as follows: That when said affidavit and notice mentioned as aforesaid by plaintiff were delivered to plaintiff by this defendant for service in the manner provided by law, to wit, by levy, advertisement and sale, the plaintiff declined to serve the same by levying and taking into his possession the personal property therein described or do any other thing whatever by law of him required until he had first been indemnified by this defendant with an indemnity bond for the amount of and conditioned as in said paragraph four set out. That thereafter this defendant in order that he might have and receive at the hands of said

plaintiff, sheriff as aforesaid, the service and duty by him owing in the premises to this defendant, did on said sheriff's demand and refusal to act unless and until so indemnified, procure to be executed and delivered to the plaintiff as sheriff aforesaid, a bond of indemnity, conditioned in manner and form as aforesaid, required by said plaintiff; that is to say in said paragraph four set out. That said bond of indemnity was not voluntary but was coerced and extorted from said Flato Commission Company without authority of law and in violation of law, and was so executed solely in order that said Flato Commission Company might require and have at the hands of plaintiff, as sheriff aforesaid, service and duty which he by law was required to render to this defendant upon the payment or tender of his lawful fees therefore, which fees were then and there tendered and paid, and said Flato Commission Company was entitled to said service without any other or further requirement or demand whatsoever on the part of said plaintiff, sheriff as aforesaid. That said bond was taken by said plaintiff as sheriff aforesaid under color of his office as sheriff as aforesaid, and is wholly unauthorized by law and is wholly without consideration and is illegal and void, wherefore, this defendant ought not to be charged and holden on the same.

IV.

Answering paragraph five of plaintiff's complaint herein, defendant denies that upon the execution and delivery of said bond of indemnity the plaintiff retained possession of any sheep and denies that he had any

sheep in his possession when said bond was executed and delivered, and denies that he sold any sheep other than the sheep mortgaged, and which were described in the mortgage and the process, placed in his hands in said foreclosure proceedings at the request of this defendant, or at all, and denies that this defendant, or any person in its behalf, requested the sale of any sheep other than those mortgaged and described in said mortgage and process, or made any request or gave any notice other than that contained in said process and further answering alleges the facts with reference to the surroundings and giving of said bond are as set forth in paragraph three of this answer.

V.

Answering paragraph six of plaintiff's complaint herein, this defendant says that it has not sufficient information or belief to enable it to answer the paragraph six, to wit, that one Ralph Cowden had commenced an action against plaintiff as sheriff of Blaine County, Idaho, and had recovered judgment in the District Court of the Third Judicial District in and for Canyon County, State of Idaho, for the sum of \$8,789.24 and for costs amounting to \$250.00 and wherein it was ordered and adjudged that said Cowden have a return of the property described in said affidavit and notice, and so as alleged, claimed by said Cowden, or in lieu thereof his damage in the sum of \$8,798.24 and costs in the sum of \$250.00, nor of any other judgment for return of property or damages, or costs in any said matters, nor of

the affirmance of said judgment, or any judgment in the premises on appeal in the Supreme Court of Idaho. Nor of the fact of plaintiff herein being liable to Ralph Cowden in the sums as in said paragraph six alleged, or of any other sum or sums of money by reason of said alleged judgment, nor there being any judgment as alleged by plaintiff growing out of the matters alleged in said complaint and for this reason denies the same.

Further answering said paragraph six this defendant denies that plaintiff herein appeared in any such alleged suit and contested the same at the instance or at the request, or with the full knowledge, or any knowledge, or with notice to, or with the consent of, or by the advice of this answering defendant.

VI.

Answering paragraph seven of the plaintiff's complaint herein this defendant denies that the conditions of said alleged indemnity bond have been broken, denies that this defendant is liable to the plaintiff because of the execution of said alleged bond, and by virtue of the terms and conditions of the same in the sum of \$8,798.24, principal and interest, and the further sum of \$250.00 costs with interest on said amounts as in said paragraph seven alleged, or in any other sum or sums.

VII.

Answering the allegations of paragraph one of the second cause of action of plaintiff's complaint, which said paragraph adopts the allegations of paragraphs one, two, three, four, five, six, and seven of the first

cause of action of the complaint herein as a part of said second cause of action, this defendant adopts his answer to the aforesaid seven paragraphs comprising the first cause of action set forth in the complaint herein as fully as though they were fully in this paragraph repeated and set forth.

VIII.

Answering the allegations of paragraph two of the second cause of action set forth in the complaint herein, this defendant says that it has not information or belief sufficient to enable it to answer the allegations of said paragraph two, to wit, that plaintiff in contesting said alleged action referred to in the first cause of action set forth in said complaint has paid out, contracted for, and become liable for, costs and expenses in traveling and attorney's fees in the total sum of \$542.90 as in said paragraph two set out, or any part thereof, and therefore denies the same.

Second Defense.

For a second and further defense this defendant says that it adopts the allegations of paragraphs one, two, three, four, five, six, seven and eight of its answer herein, as fully as though herein fully set out, and says that under said facts the bond sued on in this action is without valid consideration was coerced and extorted from this defendant, and was so taken and required without authority of law, and contrary to both the statutes and the policy of the law, and plaintiff is not entitled to recover thereon against this defendant.

Third Defense.

For a third and further defense this defendant says that the complaint herein does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

Wherefore, this answering defendant asks that this action be dismissed as against it and that it recover its costs herein, expended.

MORRISON & PENCE,
NEAL & KINYON,

Attorneys for Flato Commission Company, Sonna Block,
Boise, Idaho.

State of Idaho,
County of Ada,—ss.

B. F. Neal, being first duly sworn, deposes and says that he is one of the attorneys in the above-entitled action for defendant, the Flato Commission Company, that he has read the foregoing answer, knows the contents thereof, and that the facts therein stated are true of his own knowledge, except as to the matters therein stated to be on information and belief, and to those matters he believes them to be true. That affiant makes this affidavit for the reason that defendant, the Flato Commission Company, is a corporation and absent from the county where the attorney resides, and where the suit is filed.

B. F. NEAL.

Subscribed and sworn to before me this 15th day of April, 1905.

[Seal]

L. V. HOUSEL,
Notary Public.

Due service of the foregoing answer with copy admitted this 15th day of April, 1905.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Answer of Flato Commission Company.
Filed April 15th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Notice to Produce Papers.

To the Above-named Defendant and Their Attorneys of Record, Morrison & Pence, and Neal & Kinyon.

You will please have and produce at the trial of the above cause to be used as evidence therein by the plaintiff, all letters written from the Boise office of the American Bonding Company, to the eastern offices, either at Denver, Colorado, or Baltimore, Maryland, relating to the suit of Ralph Cowden vs. William Finney, sheriff of Blaine County, and all letters and copies of letters sent out from the Boise office of the above-named bonding company to the said eastern offices relative to the commencement of the trial of said suit or to the giving of the indemnity bond in the matter of the foreclosure proceedings of the chattel mortgage of the Flato Commission Company, the particular dates of said letters the plaintiff cannot give.

If said letters are not produced, secondary evidence of the same will be introduced by the plaintiff.

W. E. BORAH,

Attorney for Plaintiff.

Service of copy admitted this 28th day of April, 1905.

NEAL & KINYON,

MORRISON & PENCE,

Attorneys for Defendants.

[Endorsed]: Notice to Produce Papers. Filed April 28, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Stipulation Waiving Jury.

It is hereby expressly stipulated and agreed in open court by and between counsel for plaintiff and defendants that a jury in the above-entitled cause is waived, and it is agreed that said cause shall be tried by the Court without a jury.

W. E. BORAH,

Attorney for Plaintiff.

MORRISON & PENCE, and

NEAL & KINYON,

Attorneys for Defendants.

[Endorsed]: Stipulation Waiving Jury. Filed May 1st, 1905. A. L. Richardson, Clerk.

9 A. M. and 6 P. M. of said day, and the taking of said depositions will be adjourned from day to day (not including Sundays and legal holidays), between the same hours until they are completed.

MORRISON & PENCE,
NEAL & KINYON,
Attorneys for Defendants.

Received copy of the above notice this 15th day of April, 1905, and consent is hereby given that said depositions may be taken at the time and place in said notice specified; subject to all objections for competency, relevancy and materiality.

W. E. BORAH,
Attorney for Plaintiff.

State of Colorado,
City and County of Denver
(Formerly Arapahoe County),—ss.

Deposition of Ed. H. Reid.

The deposition of Ed. H. Reid, a witness produced and sworn before me, Lucy W. Piper, a notary public in and for the said city and county of Denver (formerly a part of Arapahoe County) on the 24th day of April, A. D. 1905, pursuant to the attached notice. This deposition taken on the part of defendant, the American Bonding Company of Baltimore, and the Flato Commission Company, in a certain action now pending in the Circuit Court of the United States for the State of Idaho, Central Divi-

(Deposition of E. H. Reid.)

sion, Ninth Circuit, wherein William Finney is plaintiff and the American Bonding Company of Baltimore and the Flato Commission Company are defendants.

The said ED. H. REID, being duly sworn, to testify the truth, the whole truth, and nothing but the truth relating to this cause, deposes as follows:

Q. State your name, place of residence and occupation.

A. Ed. H. Reid. Wyncote, Wyoming. Vice-President and general manager of the North Platte Canal and Colonization Company, the Wyoming and Nebraska Land and Cattle Company and the Rawhide Ranch Company.

Q. In what business were you engaged in July, 1902?

A. The livestock commission business.

Q. With what concern?

A. The Flato Commission Company, of South Omaha, Nebraska.

Q. What, if any, position, did you hold with these people at this time?

A. I was one of the directors of this company, I suppose you might say, their general western agent.

Q. Are you the Ed. H. Reid who signed the so-called indemnity bond given in this case, by the Flato Commission Company and by the American Bonding Company of Baltimore, as surety? A. Yes.

Q. What was the reason that the bond in question was given?

(Deposition of E. H. Reid.)

A. In the fall of 1901, about the 30th day of November, one R. L. Shaw, for and in consideration of the sum of \$18,626.55 in hand to him paid by the Flato Commission Company, incorporated, did bargain, sell and convey to the said Flato Commission Company, and its successors and assigns, the following stock and chattels: to wit, about thirty-five hundred head of yearling wethers and wool; about thirty-five hundred ewes, their increase and wool; about three thousand mixed lambs and wool; also, two hundred head of native two year old steers, branded P or T on left hip; all the above named sheep and lambs were marked quarter circle C , made thus, $\widehat{\text{C}}$ with black paint. Value of said security was supposed to be about \$36,000.00. In July, 1902, I was instructed by the Home Office to go to Salt Lake City, meet George A. Hawkes, accompany him to Boise and proceed to foreclose the said mortgage. Mr. Hawkes also representing the company, had been on the ground in that locality, and having learned from reports that said Shaw had departed for parts unknown, proceeded to locate the property. On my arrival at Boise, we employed counsel, Messrs. Hawley and Puckett, and Mr. Hawkes and myself thereupon made a statement of the facts surrounding the case to Mr. J. H. Hawley. In fact, all of my conversations and transactions with reference to these matters, and in any way relating to the foreclosure of the R. L. Shaw mortgage mentioned in the complaints in the Mills and Finney suits, were had with J. H. Hawley. Mr. Hawley advised foreclosure of the

(Deposition of E. H. Reid.)

mortgage, by the process of "Affidavit and Notice" or "Notice and Sale," provided for by the statutes of the State of Idaho in the foreclosure of chattel mortgages. Mr. Hawkes had at this time located one brand of these sheep in Blaine county, near Hailey. On the same day, July 22, 1902, Mr. Hawley, drafted statutory affidavit and also prepared a notice required by statute accompanying same, for the purpose of selling the sheep so located in Blaine county, under the process known as "Notice and Sale"; and to this end, Mr. Geo. A. Hawkes verified the affidavit in the presence of a notary in the office of Messrs. Hawley and Puckett. My recollection is, also, that Mr. Hawkes signed the notice directing the sheriff to make the levy, though of that I would not be sure; I do well recollect the fact that it was executed at the same time as the affidavit and was executed in the offices of Messrs. Hawley and Puckett, in Boise City. We being very anxious to have an immediate levy made by the sheriff of Blaine county, Mr. Hawley suggested that he should call up Sheriff Finney, who is the plaintiff in the action entitled William Finney vs. The American Bonding Company of Baltimore and the Flato Commission Company, and tell Mr. Finney that Mr. George A. Hawkes, a representative of the Flato Commission Company, would start that afternoon for Hailey and have Mr. Finney ready to go out and levy on the sheep early the following morning. While we were there, at that time, Mr. Hawley called for Sheriff Finney at

(Deposition of E. H. Reid.)

Hailey, Idaho. Perhaps half an hour later, Mr. Finney answered the call and in response to Mr. Hawley's statement to Mr. Finney that Mr. George A. Hawkes was starting that afternoon for Hailey, taking with him a duly executed statutory affidavit and notice for the purpose of foreclosing the R. L. Shaw mortgage as to one brand of sheep which had been located near that place by Mr. Hawkes, and requesting Sheriff Finney to meet Mr. Hawkes at the depot and go with him early the following morning to make a levy of the process of notice and sale upon the sheep in question, and thereafter sell the same. To this request, Mr. Finney replied that he would not make a levy of the process of notice and sale by affidavit and notice, as provided by the statutes of Idaho, unless the Flato Commission Company would first furnish him with a bond of indemnity covering the value of these sheep and damages in case it should prove they were wrongfully taken. As near as I can recollect the matter at this time, he demanded a bond of indemnity in the sum of ten thousand dollars. He stated that he would take no steps whatever, looking to a levy upon any sheep, claimed to have been mortgaged by R. L. Shaw to the Flato Commission Company, unless he was first indemnified.

Thereafter, Mr. J. H. Hawley, Mr. Hawkes and myself, went to the office of Chas. F. Neal, agent for the American Bonding Company for the State of Idaho, and I made out an application for the bond required by Sheriff Finney. The bond was thereafter drawn on the

(Deposition of E. H. Reid.)

same day and I signed it, as the representative of the Flato Commission Company, in their behalf. On the following day, Mr. Hawkes, Mr. Hawley and myself went to Caldwell, Idaho, to talk to Mr. Ralph Cowden about this matter, and later in the afternoon all returned, Mr. Hawley to Boise, Mr. Hawkes to Shoshone and thence to Hailey, and I to Salt Lake. I did not see the sheep in question during the summer of 1902.

Q. About how far do you live from Boise, Mr. Reid?

A. Well, about one thousand miles, I expect.

Q. Do you expect to be in, or move to the vicinity of Boise, any time in the near future? A. No, sir.

(S) ED. H. REID.

State of Colorado,
City and County of Denver
(formerly Arapahoe County),—ss.

I, Lucy W. Piper, a notary public in and for said county, hereby certify that the above-named Ed. H. Reid was by me first duly sworn according to law to testify the truth, the whole truth and nothing but the truth relating to said cause; that his deposition was reduced to writing by me, and said deposition was taken at the time and place in said notice specified, in the city and county of Denver, being in place identical with the former county of Arapahoe, in the State of Colorado, and was taken on the 24th day of April, A. D. 1905, between the hours of 9 A. M. and 6 P. M. of said day.

In testimony whereof, I have hereunto set my hand and notarial seal this 24th day of April, A. D. 1905.

My commission expires March 2d, 1907.

[Seal]

LUCY W. PIPER,
Notary Public.

[Endorsed]: Deposition of Ed. H. Reid. Filed April 27th, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

Notice to Take Deposition of George A. Hawkes.

To William Finney and W. E. Borah, his Attorney:

The above-named plaintiff will take notice that on Thursday, the 18th day of May, 1905, the defendants and each of them will take the deposition of George W. Hawkes, a witness to be used as evidence on the trial of the above-entitled cause at the law offices of James Pardee, at the Eagle Block in the City of Salt Lake, County of Salt Lake, and State of Utah, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said deposition will be adjourned from day to day (Sundays and legal holidays excepted), between the same hours until they are completed, subject to all objections, for competency, relevancy and materiality.

MORRISON & PENCE and
NEAL & KINYON,

Attorneys for all Defendants.

Received copy of the above notice this 10th day of May, 1905, and consent is given that said deposition may be taken at the time and place in said notice specified.

W. E. BORAH,
Attorney for Plaintiff.

Deposition of George A. Hawkes.

Deposition of sundry witnesses taken before me, Leonora Trent, a notary public within and for the county of Salt Lake, State of Utah, on the 27th day of May, A. D. 1905, between the hours of 9 A. M. and 5 P. M., at room No. 6 in the Eagle Block, Salt Lake City, Salt Lake County, Utah, pursuant to the annexed notice, to be read in evidence in behalf of the defendants in an action pending in the Circuit Court of the United States in and for the District of Idaho, Central Division, Ninth Circuit, County of Ada, in which William Finney, late sheriff of Blaine county, Idaho, is plaintiff, and the American Bonding Company of Baltimore, and Flato Commission Company are defendants:

GEORGE A. HAWKES, of lawful age, being by me first duly examined, cautioned and solemnly sworn, as hereinafter certified, deposeth and said, as follows:

JAMES D. PARDEE, Esqr., attorney, appearing for the defendants, questioned the witness as follows:

Q. What is your name?

A. George A. Hawkes.

Q. Where do you reside?

(Deposition of George A. Hawkes.)

A. Salt Lake City, Utah.

Q. What is your business, your occupation?

A. Traveling freight and livestock agent for the Rio Grande Railroad Company.

Q. How long have you been such agent for the Rio Grand Railroad Company?

A. You mean since I left the Flato Commission Company? I believe it was the first day of last July, 1901, that I went to work for them.

Q. Were you ever employed by the said railroad company before that time? A. Yes, sir.

Q. When did you commence to work for them the first time, if you remember?

A. I commenced to work for them in the express department, in 1890, about the last of the year, and as traveling freight and livestock agent some time in July, 1895, continued to work for them until I resigned to take a position with the Flato Commission company either in February, 1901, or 1902, as near as I can remember.

Q. What were your duties as traveling freight agent or traveling livestock agent for the Rio Grande Railroad Company?

A. Soliciting shipments of both dead freight and livestock for that company.

Q. While working for said company as livestock agent did you gain any information as to the weight of livestock and their prices? A. I think so.

(Deposition of George A. Hawkes.)

Q. State what experience you had in getting information as to weights and prices of livestock?

A. No particular experience other than from parties making shipments of livestock east I have seen a number of shipments weighed before being loaded for the market, and also seeing accounts of sales after the parties returned, which gave me a pretty good idea of the weights of certain classes of sheep on the range.

Q. State how good your judgment got to be in judging of the weight of the sheep or livestock, gained through your experience with handling sheep?

A. At the time I thought my judgment very fair.

Q. When did you commence working for the Flato Commission Company?

A. In February, 1901, or 1902.

Q. What were your duties in connection with the Flato Commission Company?

A. Soliciting shipments for their commission house and looking after their business in general in Utah, Wyoming, Idaho and Nevada.

Q. How long did you work for the Flato Commission Company?

A. About two and one-half years, as nearly as I can remember.

Q. During the summer of 1902, what was your knowledge as to the prices of sheep and livestock, if you had any?

A. Only from the market reports given by the different stock yards papers at Missouri River Points and

(Deposition of George A. Hawkes.)

Chicago, which reports I received nearly every day when I was at railroad points where I could receive my mail.

Q. What papers do you remember of reading?

A. The "Daily Drovers' Journal" and "Stockman," published at Omaha, a paper called "The Telegram," published in Kansas City; also a livestock paper published in Chicago, at the present time I don't remember its name, also a livestock paper published in Denver, besides some market reports sent out by nearly all commission houses to livestock growers throughout the country quoting markets during the shipping season, and also livestock markets published in a great many of our Western papers, such as "The Salt Lake Tribune" and the "Salt Lake Herald."

Q. During the summer of 1902, were you familiar with the local livestock market of Idaho?

A. Yes, sir.

Q. During the summer of 1902, what was the difference between the local market values of Hailey, Idaho, and the eastern markets?

A. I think the difference between the two markets was the cost and expense of transportation between those points plus the shrinkage on the stock.

Q. Were the markets of Idaho, and particularly near Hailey, Idaho, during the summer of 1902, practically controlled by the eastern market prices?

A. I think they were.

Q. Did you know ex-sheriff, William Finney, of Blaine County, Idaho? A. Yes, sir.

(Deposition of George A. Hawkes.)

Q. Do you know Mr. R. L. Shaw?

A. I have met Mr. Shaw but am not intimately acquainted with him.

Q. At the time you were working for the Flato Commission Company you had some business with Mr. Shaw and Ex-Sheriff Finney in relation to a chattel mortgage upon some sheep, presumably belonging to Mr. Shaw, state what you did in connection with that mortgage at that time?

A. In regard to this mortgage given by Mr. Shaw, as near as I can remember at the present time, Mr. Ed. H. Reid, a representative of the Flato Commission Company, and myself, went to Boise with a view of foreclosing on the sheep mortgaged by R. L. Shaw; Mr. Reid at that time making all arrangements through his attorney there for this foreclosure proceeding, making the affidavit and giving notice requesting Mr. Finney to go and take possession of the sheep of Mr. Shaw, or in his possession, and sell them under the chattel mortgage. The sheep were branded with a quarter circle and G in black paint on the sheep's back. As I remember it, the papers in this foreclosure, to be delivered to the Sheriff Finney, were given to me by the Flato Commission Company's attorney at Boise. I took them to Hailey and delivered them in person to Sheriff Finney and went with him in search of the sheep described in the mortgage. We found the sheep about 25 miles west of Hailey in the possession of a man by the name of

(Deposition of George A. Hawkes.)

Newton Parks and Sheriff Finney posted his notices and we returned to Hailey.

Q. After that, then what did you do in regard to the sheep?

A. At the time of the notice of sale I went with Sheriff Finney to the point where the sheep were to be sold by him and bid on the sheep at the time that he was selling them at auction. As I remember it now, there were several different parties from Hailey at the sale, but only one besides myself bidding on the sheep. As near as I can remember, this other party bid \$2.27 and I raised the bid to \$2.27½. At this time the party that I was bidding against made objection to the sheriff accepting bids of a half a cent, and was told by Mr. Finney that it was his business to accept any raise in the previous bid, no matter how small, after which the sheep were struck off to me. We then took them to the near-by corral, ran them through a chute and counting them out as near as I can remember now something over 2,630 head.

Q. How did that price of \$2.27½ per head compare with the prices of similar sheep at the "River" markets at that time?

A. I think about the same with the exception of adding thereto the cost of shipping.

Q. For whom did you bid the sheep in at that price?

A. For the Flato Commission Company of South Omaha.

Q. And what did they do with the sheep?

(Deposition of George A. Hawkes.)

A. They sent a man from Omaha to receive them after loading by myself and were shipped to Omaha.

GEORGE A. HAWKES,

Witness.

I, Leonora Trent, notary public in and for the County of Salt Lake, State of Utah, do hereby certify that George A. Hawkes was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed, as above set forth, was reduced to writing by myself (not being interested in the suit), in the presence of the witness and was subscribed by said witness in my presence, and was taken at the time and place in the annexed notice specified; that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit, and that said deposition was commenced at the time specified in said notice and continued without adjournment on said day.

In witness whereof I have hereunto set my hand and seal this twenty-seventh day of May, A. D. 1905.

[Seal]

LEONORA TRENT,

Notary Public, in and for Salt Lake County, State of Utah.

My commission expires November 22, 1905.

[Endorsed]: Deposition of Geo. W. Hawkes. Filed June 2d, 1905. A. L. Richardson, Clerk.

(Title and Caption Omitted.)

United States of America,
State of Nebraska,
County of Hall,—ss.

Depositions of O. W. Eaton and John R. Bonson.

Be it remembered that on this 26th day of April, A. D. (in the year of our Lord), one thousand nine hundred and five (1905), I, O. A. Abbott, a notary public, duly commissioned and qualified for and residing in the County and State aforesaid, at the office of Abbott & Abbott, in the city of Grant Island, in the County of Hall and State of Nebraska aforesaid, between the hours of nine (9) o'clock A. M. and six o'clock P. M. of said date, in pursuance of the notice and agreement hereunto attached, did call and cause to be and appear before me at said office at the time and place in said notice specified, the following named persons, to wit:

O. W. EATON and JOHN R. BONSON, sundry witnesses in behalf of the above-named defendants to testify and the truth to say on the part and behalf of the defendants above named in a certain suit and matter in controversy now pending and undetermined in the Circuit Court of the United States, Ninth Circuit, for the District of Idaho, Central Division, wherein William Finney, late Sheriff of Blaine County, Idaho, is plaintiff and the American Bonding Company of Baltimore and Flato Commission Company are defendants, and the said O. W. Eaton, being about the age of 60

years, and having been by me first duly cautioned and solemnly sworn to testify to the truth, the whole truth and nothing but the truth in the matter and controversy aforesaid, I did carefully examine the said O. W. Eaton and he did thereupon depose, testify, and say as follows, to wit:

Neal & Kinyon appearing on behalf of defendants.
No counsel appearing on behalf of plaintiff.

O. W. EATON.

(Examination on behalf of Mr. B. F. NEAL.)

Q. State your name and place of residence.

A. O. W. Eaton; Wood river, Nebraska.

Q. How long have you resided at your present home?

A. About 15 years.

Q. Were you in the State of Idaho and in the vicinity of Caldwell in the State of Idaho during the year 1902?

A. Yes, sir; I think we arrived there, myself, and Mr. J. R. Bonson, about the 8th of June. I remained there in that locality and I think I left there somewhere between the 12th and 15th, not later than that, after being up in the neighborhood of Caldwell and Weiser.

Q. Are you acquainted with one W. L. Shaw?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. He fed at my place either four or five years before 1902 and was there five or six months.

Q. Are you acquainted with one J. B. Gowen?

(Deposition of O. W. Eaton.)

A. I never met Mr. Gowen until that time that we were at Caldwell in the summer of 1902.

Q. Are you acquainted with one Ralph Cowden?

A. Yes, sir. I met him in the summer of 1902 at Caldwell, Idaho.

And it being about the hour of 12 o'clock noon, and the notary being necessarily engaged in other business during the rest of the day, the further taking of these depositions is continued until to-morrow, Thursday, April 27th, A. D. 1905, at the hour of nine (9)

o'clock A. M. at the same place.

Office of Abbott & Abbott,

City of Grand Island,

County of Hall, and State of Nebraska.

B. F. Neal, attorney for defendant, and the witnesses, O. W. Eaton and John R. Bonson, being present, the taking of the depositions is proceeded with pursuant to the adjournment as aforesaid.

On request of counsel for defendants, the witness O. W. Eaton is withdrawn and the examination of the witness John R. Bonson commenced, the further examination of the witness, O. W. Eaton being shown herein hereafter.

I, O. A. Abbott, the notary within and for the aforesaid county and State, and at the aforesaid time and place in the aforesaid controversy, do certify that the said John R. Bonson, being of about the age of 31 years, and having been by me first duly cautioned and solemnly

(Deposition of John R. Bonson.)

sworn to testify to the truth, the whole truth and nothing but the truth in the matter in controversy examine the said John R. Bonson, and that he did thereupon depose, testify and say as follows, to wit:

JOHN R. BONSON.

(Examination by Mr. B. F. NEAL.)

Q. State your name, occupation and place of residence.

A. John R. Bonson; I live at Scotia, Nebraska, and am engaged in ranching, farming and cattle feeding.

Q. How long have you lived at Scotia, Nebraska?

A. About one year.

Q. Where did you reside prior to that time?

A. In Grand Island, Nebraska.

Q. In what business have you been engaged in in the last 10 or 12 years?

A. Buying and selling stock, feeding and farming some.

Q. What class of stock have you been engaged in buying and selling?

A. Cattle, sheep and hogs.

Q. Were you familiar with the sheep business, with the handling of sheep, buying and selling of sheep, quality and grades and prices in the year 1902 and prior thereto?

A. Yes, sir; I aimed to keep posted on the market as close as possible.

Q. Are you acquainted with one J. B. Gowen?

(Deposition of John R. Bonson.)

A. Yes, sir.

Q. Where did you become acquainted with him?

A. At Grand Island about 10 or 12 years ago.

Q. Where did he live in the year 1902, if you know?

A. Caldwell, Idaho.

Q. Are you acquainted with one R. L. Shaw?

A. Yes, sir.

Q. Where did you get acquainted with him?

A. At Grand Island, about seven years ago.

Q. Where did he live in the year 1902?

A. I understood his family lived somewhere in Portland, Oregon, but he spent a great deal of his time in Idaho, where he had sheep interests.

Q. Was he at that time or had he been interested in business with your father, Nick Bonson?

A. They had a good many transactions but as to their being in partnership I don't think they had been.

Q. Did you have any correspondence with Gowen during the year 1902, or did you see any correspondence from him with reference to his having any sheep for sale?

A. I seen a letter that he had written to Nick Bonson offering quite a large bunch of sheep for sale of that they would offer them for sale a little later in the Thirty-six—Federal Transcript season, this being sometime during the month of May, 1902.

Q. Do you know where the letter is?

A. I destroyed it, it was burned up or destroyed.

(Deposition of John R. Bonson.)

Q. What sort of sheep did he say in the letter that he had for sale?

A. He represented several bands of wethers known as the Shaw and Gowen wethers and several bands of ewes and lambs that he spoke of as the Cowden and Gowen sheep.

Q. Did he price them to you at that time?

A. No, sir.

Q. What did you do, if anything, with reference to this letter in the matter of these sheep being for sale?

A. Well, I wrote O. W. Eaton of Wood river, Nebraska, asking him if he would care to take a trip out there to Idaho with a view of looking at these sheep or what other bands we might find for sale.

Q. What further was done then than the writing?

A. About the 5th of June we went out there and stopped at Caldwell, Idaho.

Q. Yourself and O. W. Eaton? A. Yes, sir.

Q. Where did you board and room while in Caldwell, Idaho?

A. When we first got there we stopped for a day or two at the depot hotel.

Q. And where after that time?

A. After that we took our meals at different places and slept at Gowan's house.

Q. During the time that you were stopping at Gowan's house, which as I understand you, was a day or two after you got there, did you have any conversation with Gowan with reference to the Shaw sheep?

(Deposition of John R. Bonson.)

A. Yes, sir; we did.

Q. Just tell me what he said?

A. He claimed that he had charge of both the Shaw wethers and the Shaw and Gowan wethers and also had charge of the Cowden and Gowan ewes and lambs, that the wethers was ranging over near Hailey, Idaho, and that the ewes and lambs were out near Council.

Q. Did you talk to him at this time about buying these sheep or any portion of them?

A. I told him I might buy the wethers if the price was right.

Q. What did he say about it?

A. He said he wouldn't price the wethers until Shaw returned from Portland, Oregon.

Q. Did he tell you when he was expecting Shaw back?

A. In a few days he said.

Q. Did he tell you anything about the character and condition of these sheep, I mean the Shaw and the Shaw and Gowan wethers?

A. He said they were yearlings and two year old wethers and that they ought to be in fair flesh.

Q. Tell you anything about what they were worth?

A. No, sir; not at that time.

Q. He did afterwards?

A. He afterwards asked me; about two weeks later he asked me, if they were worth \$2.50 per head and I told him no that I wouldn't think of giving that price for them on the present market.

(Deposition of John R. Bonson.)

Q. Was that conversation with reference to the price at a time when you had personally examined the sheep?

A. Yes, sir; that was on the ground while we were looking at the sheep over near Hailey, Idaho.

Q. During the week or more that you were stopping sleeping at his home with Mr. Eaton and stopping with him immediately after your arrival at Caldwell, Idaho, did you have any other conversation with him about the bands of wethers in Boise County, near Hailey?

A. We had a good many conversations but they were all of about the same nature, that he had charge of the sheep but that he wouldn't offer them for sale or price them until Shaw returned from Portland, Oregon.

Q. Did he give you any reason why he wouldn't offer them for sale or name any price?

A. Well, from his conversation Shaw was the main owner but that Gowan had charge of the sheep.

Q. What was the nature of the interest which Gowan claimed to have in these sheep as evidence by his conversations with you at the time, I mean in the Shaw or Shaw and Gowan wethers?

A. From his conversation I took it that he got a thousand dollars a year for managing the business, running these sheep.

Q. Then I am correct in the statement that Gowan gave you to understand that his sole interest in the Shaw or the Shaw and Gowan wethers was that Shaw owed him for his services in taking care of the sheep?

(Deposition of John R. Bonson.)

A. Yes, sir; he owed him for his services in taking care of the sheep and also that there was an unsettled account between them or an undivided feeding account that hadn't been settled at that date between Shaw and Gowan.

Q. Growing out of a partnership deal in feeding other sheep?

A. Other sheep at previous times in Nebraska and also in buying and selling several bands of sheep in Wyoming and Idaho in the winter of 1901 and 1902.

Q. That is the winter preceding the one that you were there? A. Yes, sir.

Q. Did you have any conversation with J. B. Gowan shortly after your arrival there in which he described to you the financial condition of Shaw?

A. Not the first few days he didn't say anything about the financial condition of R. L. Shaw during the first few days, but later he did speak of Shaw as having mortgaged all his sheep to the George, Adams Frederick Company of Omaha and the Flato Commission Company and that Shaw was gone and that he thought he had skipped the country for good.

Q. About what date did you have this conversation with Gowan in which he told you about Shaw having mortgaged his sheep to these different people that you have mentioned?

A. About the 17th or 18th of June, 1902.

Q. Did he at that time or at any other time tell you when it came to his knowledge that these sheep were

(Deposition of John R. Bonson.)

mortgaged to the Flato Commission Company and the George, Adams Frederick Company or to either of them?

A. Yes, sir, he said he had just looked up the records and found out.

Q. Did you have any further conversation with him at this time with reference to his affairs and Shaw's?

A. Yes, he said that he had been hoping that Shaw would return and settle up with him and pay him what Shaw was owing him, he claimed that there was quite an amount of money due him on an old feeding account and the profits of some previous deals in Idaho, Wyoming and Nebraska, from feeding sheep and that he also had advanced some of his own money for paying the expenses of running the Shaw and Gowan sheep.

Q. When you speak of the Shaw and Gowan sheep you mean the sheep which Gowan gave you to understand that he received a thousand dollars a year for running? A. Yes, sir.

Q. That is the two or three bands of Shaw wethers which were near Hailey? A. Yes, sir.

Q. Did he tell you what his relations to Shaw were in the former deals in Nebraska, Wyoming and Idaho?

A. It was a partnership deal, Gowan was interested in the profits or losses of the deals.

Q. About how long was it after you first went out there and first met Gowan in June, 1902, that you had this conversation with him in which he told you that these sheep were all mortgaged?

A. About ten days.

(Deposition of John R. Bonson.)

Q. Up to that time, that is up to the day when he told you these sheep were mortgaged to the parties whom you have mentioned, who had Gowan always spoken of as the owner of these sheep and what had he always mentioned his relation to them as being?

A. Well, he represented them as the Shaw wethers or sometimes he would speak of them as the Shaw and Gowan deal or the Shaw and Gowan sheep, and that he had charge of them or that he was running the sheep.

Q. Did you meet and were you acquainted with Ralph Cowden of Caldwell, Idaho, prior to the 17th day of June, 1902?

A. I think I first met Cowden about the 13th or 14th of June, at Caldwell, Idaho, at his office.

Q. What business was he engaged in at that time?

A. He was engaged in the lumber business.

Q. Have any conversation with him about buying sheep at that time?

A. I told him we were out looking over the country to see what could be bought.

Q. Did he have any sheep for sale at that time?

A. He had some but he didn't offer them for sale.

Q. Did he describe them to you?

A. Yes, sir, he described several bands of ewes and lambs that he had up near Council and that he and Gowan were in the deal.

Q. Did he described any other sheep than ewes and lambs that were owned by him or by him and Gowan?

A. No, sir.

(Deposition of John R. Bonson.)

Q. On the same date did you have any conversation with him with reference to R. L. Shaw?

A. Yes, sir; he spoke of Shaw being away and that he hoped he would come back and fix up some business matters with Gowan because he wanted Gowan to put some money into their sheep deal.

Q. Did he say anything further about Shaw at that time? A. Not at that date.

Q. Did he at that time say anything to you about having made a purchase of the Shaw or Shaw and Gowan sheep? A. No, sir.

Q. Did he say anything to you at that time about owning the Shaw or Shaw and Gowan sheep?

A. No, sir.

Q. Was there anything said in that conversation about the wethers known as the Shaw or Shaw and Gowan wethers?

A. Yes, sir; he spoke of Gowan as having charge of them and running the sheep but nothing further than that.

Q. When did you next after the date which you have mentioned, which I believe you have described as the 13th of June, did you have any conversation with Cowden with reference to the Shaw wethers?

A. About the 21st of June Cowden told me that he had a bill of sale of these wethers given him by Gowan and that the sheep belonged to him now, he also told me a day or two preceding the 21st of June, 1902, that Shaw had mortgaged his stuff and left his stuff in bad

(Deposition of John R. Bonson.)

shape financially and that he thought he had skipped the country for good.

Q. Did Cowden at the time mentioned in the latter part of your answer when he told you about his belief that Shaw's property was mortgaged go into details as to why he thought this to be so and if so state what they were? A. I don't think he did.

Q. Did he state to you at that time when it first came to his knowledge that Shaw had mortgaged his stuff?

A. He didn't tell me when it came to his knowledge but it was a day or two previous to about June 21st, that he knew it.

Q. Did he at any time tell you when he first found out that Shaw's stuff, as you speak of, was mortgaged?

A. No, sir; any more than when I first met him he never mentioned the matter of Shaw's stuff all being mortgaged, it wasn't mentioned during our first conversations at all.

Q. At the time when he told you, one or more days prior to June 21st, 1902, that the Shaw sheep were mortgaged or the Shaw stuff, as mentioned by you, had he ever told you that he claimed to have any interest whatever of any kind in the so-called Shaw or Shaw and Gowan wethers?

A. He never represented to me as having any interest in them at all prior to the time that he told me that he had a bill of sale of them.

(Deposition of John R. Bonson.)

Q. Are you positive that the date when he first informed you that he had a bill of sale of the Shaw sheep or the Shaw and Gowan wethers was of a later date than the date on which he told you that all of Shaw's stuff was mortgaged?

A. Yes, sir; it was at a later date, several days later.

Q. Had you and Cowden ever had any talk with reference to what stuff Shaw had in Idaho, or putting it in another way, what property and what sort of property do you mean when you say Shaw's stuff?

A. I meant the several bands of yearlings and two year old wethers near Hailey, Idaho.

Q. Was that the reference made by Cowden at the different times when he spoke to you of Shaw's stuff being mortgaged?

A. Yes, sir.

Q. Did he ever speak to you of Shaw having any other property than the different bands of one and two year old wethers?

A. No, sir; he never spoke of Shaw having any other interests in that country outside of the wethers.

Q. Do you know how many head there were and where they were supposed to be located?

A. They were about 30 miles southwest of Hailey, I take it to be southwest the way we drove going there.

Q. How did he speak of their location?

A. He spoke of them as being in the Hailey Country.

Q. Prior to the 21st of June, 1902, when Cowden first told you that he had a bill of sale for the Shaw wethers

(Deposition of John R. Bonson.)

had you ever had any conversation with him with reference to the purchase of these wethers?

A. Yes, sir; I told Cowden that on Shaw's return I might go out and take a look at them, the wethers I mean, with a view of buying them.

Q. How did you come to tell Cowden these facts?

A. Cowden asked me if I was going out to look at them.

Q. When was it that Cowden told you that the Shaw sheep were mortgaged with reference to the time that Gowan had told you that Shaw had mortgaged them?

A. It was at a later time when Cowden told me that when Gowan told me, or it was the same day, but a day or so later.

Q. Did Gowan ever tell you in round numbers the amounts of the mortgages which George, Adams, Frederick Company and the Flato Commission Company held against these sheep?

A. Yes, sir, he told me that George, Adams, Frederick Company held about \$16,000.00 and the Flato Commission Company about \$18,000.00.

Q. Did he ever tell you anything about why these mortgages were given and what was done with the money?

A. No, sir.

Q. Did Cowden ever tell you when the bill of sale in question and to which you have referred was executed to him by J. B. Gowan?

A. It was about the 21st or 22d day of June, 1902,

(Deposition of John R. Bonson.)

that he made the remark to me that Gowan had just given him a bill of sale for them.

Q. Are you sure that those are the words, "Had just given him a bill of sale," are you? A. Yes, sir.

Q. Had he ever prior to that date ever claimed to have any interest in the Shaw or Shaw and Gowan wethers? A. No, sir.

Q. Had J. B. Gowan ever prior to that date claimed to have any interest as owner in the so-called Shaw or Shaw and Gowan wethers?

A. No, sir, he never spoke of the sheep as him being one of the owners but he did make the remark previous to that time that if he sold us the sheep he would sell them as the Shaw wethers and he did claim also that Shaw was owing him for money advanced in taking care of these sheep and an unsettled profit on some former deals or an undivided profit on some former deals.

Q. Had he ever at any time offered to sell these sheep of Shaw and Gowan?

A. No, sir; he wouldn't price me the sheep at all nor offer me the sheep for sale until after Shaw's return from Portland, Oregon, but Shaw never returned, but after June 22d or about the 23d I went to Hailey, Idaho, and there met Gowan and we went out to look at the sheep and he offered the sheep for sale as the Cowden wethers.

Q. Did he tell you that they were the same sheep that he had before described as the Shaw wethers?

(Deposition of John R. Bonson.)

A. No, sir; he didn't; but he described the brands on the wethers previously as being the Shaw brands and when we got there those were the brands the sheep had.

Q. Describe that brand?

A. I noticed some with a quarter circle G brand and some with an S brand and a quarter circle G brand.

Q. All made with black paint?

A. Black or red, the brands had growed dusty and you couldn't tell whether it was red or black paint.

Q. Had Gowan described to you the brands which were on the Shaw wethers prior to the time when you went up there?

A. Yes, sir.

Q. And were the brands of which you have just given a description the ones which he told you were on the Shaw wethers?

A. Yes, sir.

Q. What were the brands which you found upon the Cowden wethers which Gowan offered for sale to you about the 23d of June, 1902, in the vicinity of Hailey, Idaho.

A. They were branded with a quarter circle G, with black or red paint and some branded S, and a quarter circle G, with black or red paint. I say black or red paint on account of the brands being full of dust and you couldn't tell originally whether it had been black or red paint.

Q. Did the brands correspond on the location on the sheep described by Gowan as the Shaw sheep prior to the time when you went there into the Hailey country

(Deposition of John R. Bonson.)

with the location of the brands on the sheep which he showed to you when you went there?

A. They were represented as being branded on the back with that brand, and that's the way I found them branded.

Q. Did you ever have any conversation with J. B. Gowan while with him in the vicinity of Hailey on or about the 23d of June, 1902, as to whether the sheep which he showed you were the same sheep, the same identical sheep which he had before talked to you about as belonging to R. L. Shaw and being for sale?

A. Yes, he said he had sold his sheep to Cowden and that he would sell me the sheep as Cowden's sheep.

Q. At the time that you were up there to see them did he make you any offer on these sheep, any price that he would sell them at?

A. He asked me if I would give \$2.50 a head for them.

Q. What did you say to that?

A. I told him they wasn't worth \$2.50, that if I was buying them I would give \$2.00.

Q. What further conversation was there had at this time as to the value of these sheep?

A. Well, I don't remember.

Q. How many bands of Shaw sheep, or as they were then called Cowden sheep were shown you by Gowan when you were in the vicinity of Hailey on or about the 23d of June and about how many head if you know?

(Deposition of John R. Bonson.)

A. There was two bands of about twenty-eight or twenty-nine hundred each, that was the amount the herder claimed there was in the two bands, that is 2,800 or 2,900 in each band or 5,600 or 5,700 in the two bands.

Q. Do you remember who was herding these sheep?

A. No, sir, I don't, the foreman's name was Parks, I believe.

Q. You looked these sheep over carefully at the time that you were there? A. Yes, sir; I did.

Q. What condition were they in, what grade of sheep?

A. They were what we would call a heavy pelted sheep, not the best of sellers but in fair flesh.

Q. Do you know what the value of such sheep was in the summer of 1902?

A. I could only tell by referring to the market reports of that date owing to lapse of time.

Q. Referring back to your conversation with Cowden with reference to Shaw and these sheep did Cowden at any time prior to June 21st tell you anything further than what you have already stated as to Shaw having mortgaged his sheep?

A. He said that Shaw had mortgaged a lot of stuff to different eastern people and had skipped the country.

Q. Did Gowan or Cowden at any time tell you when the bill of sale testified to by you was executed?

A. No, sir; they didn't give me the date; it was about the 20th of June, 1902.

(Deposition of John R. Bonson.)

Q. How do you fix the 20th of June as the date to which they referred?

A. That was about the date that Cowden told me that he had just gotten a bill of sale of these sheep.

Q. Those were the words that he used, "just gotten a bill of sale of those sheep," were they?

A. Yes, sir.

Q. And he made that statement to you that he had just gotten a bill of sale of those sheep on that day?

A. Yes, sir; about the 20th or the 21st of June.

Q. Who first spoke to you about the bill of sale having been given Gowan or Cowden? A. Gowan.

Q. What did he say to you in the same connection when he spoke to you?

A. He said he had sold the sheep to Cowden.

Q. Give you any reason why?

A. Yes, he did; he claimed Shaw was owing him six to eight thousand dollars and thought he ought to protect himself if he could and asked me if I blamed him for protecting himself in that way.

Q. That was about how long after he had first offered the sheep for sale to you as the Shaw sheep?

A. About ten days.

Q. That would place it about what date in June?

A. About the 20th or a day or two prior to that time.

Q. Had Gowan at any time prior or did he at any time after claim to have title to the so-called Shaw sheep?

(Deposition of John R. Bonson.)

A. He never claimed to have any title to them.

Q. Did he claim to have any interest in them whatever other than that Shaw was owing him six or eight thousand dollars?

A. He never told me that he had any interest in these particular sheep; still he referred to them as the Shaw wethers and the Shaw and Gowan sheep but he never claimed as being the owner or part owner of these sheep.

Q. You are positive that at no time prior to the 20th or at most the 18th or 19th of June, 1902, that no mention was ever made to you by either J. B. Gowan or Ralph Cowden of the fact that a bill of sale of these sheep had been made by Gowan to Cowden?

A. No, sir. No mention had ever been made to me prior to that time.

Q. And from the time that you arrived at Caldwell on the 7th or 8th of June up to the time when you say he spoke to you about the bill of sale and asked you if you blamed him for doing what he had done as testified to by you on a day somewhere from the 18th to the 20th of June, 1902, you had talked with him how frequently?

A. Most every day.

Q. And during almost every day talked to him with reference to buying them? A. Yes, sir.

Q. And did he ever at any time during this period say to you that he had a right to sell these sheep or had any title to them or any portion of them?

A. No, sir.

(Deposition of John R. Bonson.)

Q. How did he say he owned them, I mean prior to the date when he told you he had given a bill of sale as mentioned by you?

A. He told me on Shaw's return he would be in a position to price the sheep to me and offer them for sale.

Q. On the date mentioned by you as when you was told by Gowan that a bill of sale had been given by him to Cowden for these sheep did he say anything to you about Shaw returning?

A. He told me that Shaw hadn't returned and that he didn't think he ever would.

Q. Had he ever indicated such a thought to you prior to that day? I mean that he wouldn't return?

A. No, sir.

Q. Had he or had he not up to the date mentioned sometime from the 18th to the 20th of June, 1902, constantly told you that he was expecting Shaw back from Portland, Oregon, any day and that he would be in a position to price the sheep to you when he came back?

A. Yes, sir; he always spoke of Shaw returning up to the date about the 18th of June, I mean the date when he told me that he had sold the sheep to Cowden and asked me if I blamed him for it.

Q. Did Gowan ever tell you anything about on what basis he took care of the Shaw sheep?

A. He at one time told me that he got a thousand dollars a year for running Shaw's sheep business.

Q. Did Gowan ever tell you about having been interested in any sheep there?

(Deposition of John R. Bonson.)

A. He told me about having an interest with Cowden in some ewes and lambs.

Q. When did he tell you that?

A. I took that from his letter that I seen prior to June 7th and he also told me on several different occasions between June 7th and June 18th or 20th.

Q. Tell you anything about on what basis he was taking care of these sheep? A. No, sir.

Q. Didn't say anything about whether he was getting a salary of a thousand dollars a year or any other amount for taking care of these sheep?

A. No, sir.

Q. What is your age? A. 31.

Q. What business have you been engaged in for the last 13 or 14 years principally?

A. Farming, cattle feeding, buying and selling stock and cattle, hogs and sheep feeding.

Q. With whom have you been engaged in business during most of that time?

A. With my father most of the time whose name is Nick Bronson and who resides at Grand Island, Nebraska.

Q. For how many years have you been engaged to any extent in the business of buying and selling sheep?

A. For the last ten years.

Q. Are you familiar with the market price of sheep during that period? A. Yes, sir.

Q. In the business of buying and selling sheep during the period mentioned, how did you determine the

(Deposition of John R. Bonson.)

prices at which you bought and the prices at which you would sell or sold?

A. I always based the values by what they would bring at the livestock centers or sheep bought in the west should be bought at prices sufficiently low that by adding freight and other shipping expenses that they would sell on the market without a loss and whatever they net gives you the value on the range or at the western section.

Q. In selling sheep what determines you in fixing the prices at which sold where they are not sold in the principal markets?

A. All values at all times are based on what sheep will bring at the principal livestock centers as Chicago, Omaha and St. Joe and Kansas City.

Q. Do you know of sheep having a market value except as related as determined and fixed by their selling price at these markets? A. No, sir.

Q. Do you know or have you known of sheep having a market value in Idaho or elsewhere in the last 15 years except by reference to the selling prices at these principal livestock centers at which they are sold?

A. No, sir, all sheep values are determined by what they will bring at the principal markets especially wethers, whose values are what they would bring at the principal markets and the values they would bring at the principal markets are as staple as corn, wheat, oats, cattle and hogs.

(Deposition of John R. Bonson.)

Q. Do you expect to be in the vicinity of Boise, Idaho, in the near future? A. No, sir.

Q. About how far is it from here to Boise, Idaho?

A. About thirteen or fourteen hundred miles.

Witness excused.

JOHN R. BONSON.

O. W. EATON, the witness who was temporarily withdrawn by counsel for defendant, was again called and testified as follows, to wit:

(Examination by Mr. B. F. NEAL.)

Q. Where did you make your headquarters, where did you room while stopping at Caldwell, Idaho, when stopping there in the summer of 1902?

A. We stopped first at the depot hotel for two or three days and after that I lodged at Gowan's; his wife was away from home, I understood at Grand Island on a visit; we just simply slept there nights for three or four nights.

Q. You mean that after you moved there from the hotel that you just stayed there three or four nights or all the balance of the time?

A. All the balance of the time is my recollection.

Q. On or about what time did you arrive at Caldwell? A. About the 8th.

Q. And about what date did you leave?

A. Somewhere about from the 15th or 17th of June.

Q. During the time that you were stopping at Gowan's or at the hotel mentioned and at the time men-

(Deposition of O. W. Eaton.)

tioned did you have any conversation with Gowan with reference to the purchase of sheep?

A. Why, I didn't have but a very little conversation, he spoke of he and Cowden running ewes and lambs together.

Q. Did he at time state to you that he had any wethers or any interest in any wethers in the State of Idaho?

A. No, sir, never did, nothing but ewes and lambs, no wethers at all.

Q. Did you ever tell him why you were there, what your mission or business in that locality was?

A. Yes, sir, I told him we were there for the purpose of purchasing wethers to put on the market.

Q. Did he talk to you about selling you any wethers?

A. Yes, sir, he did.

Q. What wethers did he tell you about?

A. He said he had for sale, he didn't say they were his but he said he had for sale between five and six thousand wethers, this Gowan, yearlings and two year old wethers.

Q. Did you have any further conversation with him prior to the time you say you left there on or about the 15th or 17th of June, 1902, in which he told you whose sheep they were?

A. Yes, sir, I had a conversation with him later after returning from Weiser and Huntington.

Q. When did you arrive at Caldwell, Idaho?

A. On the 7th or 8th of June, 1902.

Q. And how long did you stay there?

(Deposition of O. W. Eaton.)

A. I stayed there three or four days, that is until about the 11th or 12th and then went to Weiser and Huntington, being gone over night.

Q. And then where did you go?

A. Back to Caldwell returning on the 13th or 14th, I then remained at Caldwell, stopping at Gowan's until some time from the 15th to the 17th of June, 1902, when I returned home leaving John R. Bonson, there.

Q. At about what date was this that you had this that you had this last conversation with Gowan that you have just testified to?

A. Some time between the 11th and 17th, it must have been about the 14th of June, 1902.

Q. What further did he tell you with reference to the wethers near Hailey with reference to which he had spoken to you before?

A. He told me at that time that Shaw hadn't returned and that he didn't care to sell them until Shaw returned, he didn't speak of having any interest in them at that time.

Q. Did he ever speak to you or in your presence of ever owning the title to those sheep? A. No, sir.

Q. Who did he speak of as owning these sheep?

A. R. L. Shaw.

Q. About how many head of these sheep did he say there were?

A. He said there were two bands, he thought about 2,900 in a band, he spoke as there being between 57 and 5,900.

(Deposition of O. W. Eaton.)

Q. What age and description of sheep did he say they were?

A. He said they were on what we call a merino order and that some of them were rather pelty.

Q. Did he price them to you?

A. No, sir, he didn't want to price them until Shaw returned I let that to Bonson.

Q. Did he tell you anything about Shaw's financial condition?

A. He spoke about him as being heavily in debt but didn't speak about any mortgages.

Q. Did you have any other or further conversation with Gowan, J. B. Gowan with reference to these bands of sheep? A. No, sir, that was all.

Q. Did you make any offer to buy them at that time?

A. No, sir, well, I couldn't very well, he didn't want to sell them until Shaw returned.

Q. Did he give any reason why he wouldn't sell them until Shaw's return?

A. He represented that Shaw owned the sheep and that he wouldn't sell them until he returned.

Q. About what time did you have your last conversation with him when he made such representations to you?

A. It was about the 14th or 15th of June, 1902.

Q. Did he ever make any different representations to you at a later day? A. No, sir.

Q. Or prior to that time? A. No, sir.

(Deposition of O. W. Eaton.)

Q. Up to the time that you left Caldwell for return to Nebraska, between the 15th and 17th as testified to by you, had Shaw returned to Caldwell on that vicinity to your knowledge? A. No, sir.

Q. Had Gowan at any time made any figures to you or any basis on which he would sell these sheep?

A. No, sir, he never made any offer at all.

Q. Do you know how much longer John R. Bonson stayed there after you left?

A. No, sir, I don't positively; he went to look at these sheep, I talked with him when he come back, it was the very last of June or the first part of July that he returned, that's my recollection.

Q. Did Bonson remain longer on account of some arrangements you had with him because of your trip west?

A. Yes, sir, we had some hopes that we would get these sheep.

Q. You didn't see the sheep yourself?

A. No, sir.

Q. Did Gowan describe the marks and brands on these sheep to you?

A. No, sir, I didn't ask him and he didn't describe them.

Q. Did you hear Gowan say anything to Bonson about staying longer after you left?

A. Yes, sir, I heard him invite him to stay and go and look at these sheep.

Q. Did you understand why he wanted him to stay longer, stay to a later date?

(Deposition of O. W. Eaton.)

A. I understood he wanted him to stay and look at these sheep, I think he wanted him to wait a few days for Shaw to return; he was expecting Shaw every day and he gave me to understand that he couldn't sell the sheep until Shaw's return.

Q. Did you ever have any conversation with Gowan with reference upon what basis he was caring for the so-called Shaw wethers over near Hailey, I mean whether or not he was receiving or was to receive any pay for his services.

A. Yes, sir, I understood him that he was at work on a salary, he didn't tell me the amount and I didn't ask him, but he gave me to understand that he was taking care of them on a salary.

Q. By giving you to understand you mean do you that he was working for a salary in caring for the Shaw sheep? A. Yes, sir.

Q. Did he tell you what, if any, compensation he was receiving for caring for the so-called Cowden and Gowan ewes and lambs?

A. I understood he was in partnership on the ewes and lambs.

Q. Did he say anything about being paid for his services in caring for them?

A. Not for the Cowden ewes and lambs.

Q. Did he at any other time by direction, words or otherwise, indicate that he claimed any title as a partner or otherwise in any of the so-called Shaw wethers?

(Deposition of O. W. Eaton.)

A. No, sir, only simply working on a salary, no claim of title whatever.

Q. Where did he tell you the Shaw wethers were located at that time?

A. Over near Hailey in what they called the Wood River Country.

Q. Where did he tell you that the Gowan and Cowden ewes and lambs were located?

A. Up near a place or town they called Council.

It being six o'clock P. M., the further taking of the deposition is adjourned until the hour of nine o'clock A. M. on Friday, April 28, 1904, at the same place as nere-inbefore described.

B. F. Neal, attorney for defendants, and the witness, O. W. Eaton, being present, and it being of the hour of nine o'clock A. M. of April 28, 1904 (Friday), the further taking of the deposition is continued as per adjournment, at the office of Abbott & Abbott, before O. A. Abbott, the Notary Public.

(Examination by B. F. NEAL.)

Q. Did Gowan ever tell you or by any words or acts give you to understand that any person other than R. L. Shaw owned or claimed to own any of the two bands of wethers located in the Wood Country near Hailey?

A. No, sir, never did.

Q. Did he say at any time to you or in your presence that Ralph Cowden owned part of them?

A. No, sir, never mentioned his name.

(Deposition of O. W. Eaton.)

A. I understood he wanted him to stay and look at these sheep, I think he wanted him to wait a few days for Shaw to return; he was expecting Shaw every day and he gave me to understand that he couldn't sell the sheep until Shaw's return.

Q. Did you ever have any conversation with Gowan with reference upon what basis he was caring for the so-called Shaw wethers over near Hailey, I mean whether or not he was receiving or was to receive any pay for his services.

A. Yes, sir, I understood him that he was at work on a salary, he didn't tell me the amount and I didn't ask him, but he gave me to understand that he was taking care of them on a salary.

Q. By giving you to understand you mean do you that he was working for a salary in caring for the Shaw sheep? A. Yes, sir.

Q. Did he tell you what, if any, compensation he was receiving for caring for the so-called Cowden and Gowan ewes and lambs?

A. I understood he was in partnership on the ewes and lambs.

Q. Did he say anything about being paid for his services in caring for them?

A. Not for the Cowden ewes and lambs.

Q. Did he at any other time by direction, words or otherwise, indicate that he claimed any title as a partner or otherwise in any of the so-called Shaw wethers?

(Deposition of O. W. Eaton.)

A. No, sir, only simply working on a salary, no claim of title whatever.

Q. Where did he tell you the Shaw wethers were located at that time?

A. Over near Hailey in what they called the Wood River Country.

Q. Where did he tell you that the Gowan and Cowden ewes and lambs were located?

A. Up near a place or town they called Council.

It being six o'clock P. M., the further taking of the deposition is adjourned until the hour of nine o'clock A. M. on Friday, April 28, 1904, at the same place as nere-inbefore described.

B. F. Neal, attorney for defendants, and the witness, O. W. Eaton, being present, and it being of the hour of nine o'clock A. M. of April 28, 1904 (Friday), the further taking of the deposition is continued as per adjournment, at the office of Abbott & Abbott, before O. A. Abbott, the Notary Public.

(Examination by B. F. NEAL.)

Q. Did Gowan ever tell you or by any words or acts give you to understand that any person other than R. L. Shaw owned or claimed to own any of the two bands of wethers located in the Wood Country near Hailey?

A. No, sir, never did.

Q. Did he say at any time to you or in your presence that Ralph Cowden owned part of them?

A. No, sir, never mentioned his name.

(Deposition of O. W. Eaton.)

Q. Did he say at any time that he himself owned part of the or had an interest in part of them?

A. No, sir.

Q. You met Ralph Cowden occasionally while there?

A. I was in his office once or twice.

Q. What business was he engaged in at that time?

A. Lumber business.

Q. Talk to him about sheep?

A. Yes, sir, he spoke about running these ewes and lambs with Gowan.

Q. Where did you say they were located?

A. I think he said they were located—if I get the direction right—north, near Council up in that country.

Q. Did he speak about having any other sheep up in Idaho other than the ewes and lambs?

A. No, sir, I didn't hear him mention any others.

Q. Did he speak to you at any time about Gowan having any sheep or any interest in any sheep except those that he owned with Cowden? A. No, sir.

Q. When did you have your last conversation with Ralph Cowden?

A. I think about the 14th, right about that time, I couldn't give the date, June 14th, 1902, I think.

Q. Did you have any conversation with him with reference to R. L. Shaw after that?

A. No, sir, but very little; he spoke as though they expected Shaw back soon.

Q. Did you have any conversation with him with reference to Shaw's sheep being mortgaged?

(Deposition of O. W. Eaton.)

A. No, sir, none at all.

Q. How old are you? A. 68.

Q. For how many years have you been engaged in the sheep business? A. About 30 years.

Q. What has been the nature of the sheep business that you have done during that period?

A. During that time I run sheep in Kansas on the range with a partner, Mr. Gifford, a brother in law of mine, for six or eight years, and since that time my business has been confined to feeding sheep during the winter, fattening them for market.

Q. How have you usually disposed of your sheep?

A. Fattened them and sold them in Omaha and Chicago.

Q. Have you been engaged to any extent in the business of buying and selling sheep?

A. Yes, sir, to considerable extent.

Q. Give it as near as you can, for the last 15 years—describe what you have been doing?

A. Going into the western states, Idaho, New Mexico, Utah and Oregon, and driving sheep through, I never drove through but once, I was connected with 14,000 and drove clear through from Oregon, bought them in Oregon and sold part of them here to feeders and fed part of them myself.

Q. What experience other than that have you had?

A. I have bought and sold to feeders considerable.

Q. About how many have you handled personally every year?

(Deposition of O. W. Eaton.)

A. From six to ten thousand.

Q. Through the period mentioned by you?

A. Perhaps not every year but it would run along that number.

Q. Upon what do you base the price or did you base the price and would have paid for sheep when buying and the prices you would have asked for and received usually when you have sold sheep?

A. On the markets in the livestock centers, principally Omaha, Chicago and St. Joe.

Q. Is there to your knowledge or has there ever been during the time during which you have handled sheep a market value for sheep except the relative market value with reference to the prices at which sheep are bought and sold in the general livestock sales points as at Chicago, Omaha and St. Joe.

A. Yes, sir; those are the markets we buy on, the prices we pay for sheep wherever we buy them is governed by the price at which they can be sold for on the principal markets by adding to the cost price the price of transportation from the place of purchase to the place of selling, we determine the price which we will pay.

Q. So far as you know and based upon your experience as a dealer and your general knowledge, do you know of any market value in the State of Idaho or any other State for sheep except as based upon the current prices at the time in the markets of the United States as for instance Omaha, Chicago and St. Joe?

(Deposition of O. W. Eaton.)

A. No, sir, I don't.

Q. Do you know of any way of arriving at the market prices except by taking as a basis the current market price in these sales markets?

A. No, sir, I don't. I wouldn't attempt to buy sheep on any other basis except by taking into consideration the current prices in Chicago, Omaha and St. Joe markets.

Q. How do those current prices generally compare with each other on a given day?

A. About all the same at the different points, some may be farther away; we think we can do a little better by going to Chicago, but it's about a stand-off.

Q. With your experience as a sheep dealer have you ever bought sheep upon any other basis than upon the the market price that is determined by the market price upon which sheep were selling at the principal markets?

A. No, sir.

Q. In your judgment is there any other market price than that founded upon that basis?

A. I don't know of any other way to buy sheep safely.

Q. Where is Wood River, Nebraska?

A. Sixteen miles west of here.

Q. And about how far from Boise, Idaho?

A. It must be 1400 miles.

Q. Have you any intention of being or will you prob-

(Deposition of O. W. Eaton.)

ably be in the vicinity of Boise, Idaho, in the near future?

A. No, sir, I don't think I will.

O. W. EATON.

Witness excused.

State of Nebraska,
County of Hall,—ss.

I, O. A. Abbott, a notary public duly commissioned and qualified for and residing in the county and State aforesaid, do hereby certify that O. W. Eaton and John R. Bonson were by me severally duly sworn to testify the truth, the whole truth and nothing but the truth, and that the depositions by them respectively subscribed and each sheet whereof has been further verified by their respective signatures upon the margin thereof were reduced to writing on a typewriting machine by O. A. Abbott, Jr., who is not related to or counsel for either party or otherwise interested in the result of this suit, and in the presence of each witness respectively, and were by said witnesses subscribed and verified in my presence and were taken at the time and in the place in the annexed notice and agreement specified, and I further certify that I am not counsel, attorney or relative of either party, or otherwise interested in the event of this suit, and that the taking of said depositions was commenced at the time in said notice specified and was continued by adjournments from day to day as set forth in the body of said depositions, that is to say, from the 26th

day of April, A. D. 1905, to the 28th day of April, A. D. 1905, both of said days included.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 28th day of April, A. D. 1905 (nineteen hundred and five).

[Seal]

O. A. ABBOTT,
Notary Public.

My commission expires Nov. 20, 1909.

O. A. ABBOTT,
Notary Public.

FEES.

O. W. Eaton, witness:

Mileage, 16 miles.....	\$ 1.60
Witness fees, three days.....	6.00

John R. Bonson, witness:

Mileage, 50 miles	\$ 5.00
Witness fees, two days.....	4.00

Swearing witnesses two at \$.10..... .20

Certificate and seal.....\$.25

Transcribing depositions on typewriter.....\$26.60

County clerk's certificate.....

Postage and registry

Total.....	<u>\$43.87</u>
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State of Nebraska,
Hall County,—ss.

I. J. L. Schaupp, county clerk of the county aforesaid,
do hereby certify that O. A. Abbott, an acting notary

public within and for said county, duly qualified to act as such, that all of his official acts are entitled to full faith and credit when executed within the period named, to wit: Commencing December 12th, 1903, and ending November 20th, 1909, the last-named date being the date of the expiration of his commission.

In testimony whereof, I have hereunto subscribed my name and affixed the official seal of said county at my office this 28th day of April, 1905.

[Seal]

J. L. SCHAUPP,
County Clerk.

(Title and Caption Omitted.)

Notice to Take Depositions of O. W Eaton and John R. Bonson.

District of Idaho,
County of Ada,—ss.

To William Finney, Plaintiff, and W. E. Borah, his Attorney:

The above-named plaintiff will take notice that on the 26th of April, 1905, the said defendants, and each of them, will take the depositions of O. W. Eaton and John R. Bonson, witnesses to be used as evidence on the trial of the above-entitled cause at the law offices of Abbott and Abbott, in the city of Grand Island, in the county of Hall, State of Nebraska, between the hours of 9:00 A. M. and 6:00 P. M. of said day, and the taking of said depositions will be adjourned from day to day (not in-

cluding Sundays and legal holidays) between the same hours until they are completed.

MORRISON & PENCE and
NEAL & KINYON,

Attorneys for all Defendants.

Received copy of the above notice this 15th day of April, 1905, and consent is hereby given that said depositions may be taken at the time and place in said notice specified, subject to all objections for competency, relevancy and materiality.

W. E. FORAH,
Attorney for Plaintiff.

[Endorsed]: Depositions of O. W. Eaton and Jno. R. Bonson. Filed May 3d, 1905. A. L. Richardson, Clerk.

Plaintiff's Exhibit "A."

In the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County.

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, Sheriff of Blaine
County, State of Idaho,

Defendant.

Complaint.

Comes now the plaintiff herein and for cause of action against the defendant alleges:

1. That the defendant, William Finney, now is and during all the times herein mentioned has been the duly elected, qualified and acting sheriff of the county of Blaine, State of Idaho.

2. That on the first day of July, 1902, in the county of Blaine, State of Idaho, the plaintiff was the owner and in possession and entitled to the possession and ever since said time has been the owner and entitled to the possession of the following described chattels, of the value of eighteen thousand four hundred and seventy-four dollars (\$18,474.00) to wit: Fifty-four hundred and sixty-nine (5469) head of sheep wethers, said sheep being branded with paint on wool as follows: Quarter circle G "G" said sheep being known as the Cowden bands of sheep.

3. That defendant as sheriff of said County on the 24th day of July, 1902, in the county of Blaine, State of Idaho, and at a time when the plaintiff was the owner and in possession and entitled to the possession of said property and all thereof and without the plaintiff's consent wrongfully took said goods and chattels from the possession of the plaintiff into the possession of the defendant.

4th. That before the commencement of this action, to wit, on the 31st day of July, 1902, before the filing of this complaint, the plaintiff demanded the possession of said goods and chattels.

5th. That said defendant still unlawfully and without right, withholds and denies said goods and chattels and all of the same from the possession of the plaintiff

to his damage in the sum of eighteen thousand four hundred seventy-four dollars (\$18,474.00), the value of the sheep, and three thousand dollars (\$3,000.00) damages for the detention of the same.

Wherefore, plaintiff prays judgment against defendant, first, for the recovery or possession of said goods and chattels or for the sum of eighteen thousand four hundred and seventy-four dollars (\$18,474.00), the value thereof in case return cannot be had; second, for three thousand dollars (\$3,000.00) damages and for costs of this suit.

W. E. BORAH, and
FRANK J. SMITH,
Attorneys for Plaintiff.

State of Idaho,
County of Blaine,—ss.

Frank J. Smith, being first duly sworn, deposes and says, that he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge. This verification is made by affiant as attorney for plaintiff, for the reason that all of the facts herein alleged are within the knowledge of this affiant.

[Seal]

FRANK J. SMITH.

Subscribed and sworn to before me this 31st day of July, 1902.

W. E. HEARD,
Clerk of District Court.

[Endorsed]: Filed July 31st, 1902, at 4:15 P. M. W.
E. Heard, Clerk.

(Title and Caption Omitted.)

Demurrer

Comes now the defendant and demurs to the complaint of the plaintiff herein, upon the grounds that said complaint does not state facts sufficient to constitute a cause of action.

Wherefore, defendant prays to be hence dismissed with his costs in this behalf expended.

HAWLEY & PUCKETT,

Attorneys for Defendant.

Service by copy admitted this 5th day of August, 1902.

W. E. BORAH.

[Endorsed]: Filed August 6th, 1902. W. E. Heard,
Clerk. By Geo. A. McLeod, Deputy. Filed Feb. 18th,
1903. John A. Tucker, Clerk. Filed December 20th,
1902. J. H. Wickersham, Clerk.

*In the District Court of the Fourth Judicial District of
Idaho, in and for Blaine County.*

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, as Sheriff of
Blaine County, Idaho,

Defendant.

Answer.

Comes now the above-named defendant, and by way of answer to the complaint of plaintiff filed herein, admits, denies and alleges as follows:

1st. Admits that the defendant now is, and during all the times mentioned has been, the duly qualified and acting sheriff of Blaine County, Idaho.

2d. Denies that on the 1st day of July, 1902, or at any other time, either in the county of Blaine, State of Idaho, or elsewhere, plaintiff was the owner in the possession, or entitled to the possession, or ever at any time since such day has been or now the owner or entitled to the possession of the property and chattels mentioned in plaintiff's complaint, to wit: 5,469 head of sheep, wethers, branded quarter circle G with paint on wool, or any part thereof of the value of \$18,474.00, or of the value of any other sum or amount, or at all.

3d. Denies that said defendant as sheriff, or otherwise, on the 24th of July, 1902, or at any other time, in the county of Blaine, State of Idaho, or elsewhere at

any time since plaintiff was the owner or in the possession, or entitled to the possession of said sheep or property, or all or any part thereof, without the plaintiff's consent wrongfully took the said property and chattels, or part thereof from the possession of the plaintiff, or into the possession of this defendant, or otherwise.

4th. Denies that before the commencement of this action, and on the 31st day of July, 1902, or at any other time, or before the filing of this complaint, the plaintiff demanded possession of said sheep or chattels or any part thereof.

5th. Denies that this defendant still or otherwise, or unlawfully, or without right, withholds or detains said property or chattels, or all or any part of the same from the possession of the plaintiff, to his damage in the sum of \$18,474.00 or any other sum or amounts as damages or otherwise, for the detention or any detention of said sheep, or any part thereof.

And for a further defense herein the defendant alleges:

1st. That from and after the 30th day of November, 1901, the Flato Commission Company, a corporation, has been and now is the owner and holder of a certain chattel mortgage covering and including the property described in plaintiff's complaint herein, given by one R. L. Shaw to secure the payment to the said the Flato Commission Company aforesaid of the sum of \$18,626.55, together with interest thereon as provided in said mortgage, which said sum has never been paid or any part thereof, except as hereinafter stated, and which said

chattel mortgage was duly filed with the recorder of Blaine County, Idaho, on the 23d day of July, 1902, in book 2 of Chattel Mortgages, at page 149, and which said chattel mortgage has never been paid, canceled or satisfied, except as hereinafter stated, and was at all times since its execution in full force and effect.

2d. That on the — — day of July, 1902, proceedings were commenced to foreclose such chattel mortgage under the provisions of sections 3391 to 3398, inclusive, of Title XII, Chapter IV, of the Revised Statutes of Idaho, and the amendments thereto.

3d. That pursuant to the provisions of such statutes one George A. Hawkes, who then was and now is the agent of the said the Flato Commission Company aforesaid, the said mortgagee, made an affidavit stating the date of said mortgage and names of the parties thereto, and a full description of the property mortgaged, and the amount due thereon, together with a notice signed by said George A. Hawkes, agent of the mortgagee aforesaid, requiring the said defendant, as sheriff of Blaine County, Idaho, to take said property into the possession of the defendant and sell the same, which said affidavit and notice were placed in the hands of said defendant as such sheriff.

4th. That said defendant, as such sheriff, by virtue of such process, and not otherwise, on the 24th day of July, 1902, duly levied upon and took into his possession the sheep mentioned in said complaint, the same being at the time of such levy in the possession of Newton Parks, and said defendant did on said 24th day of July,

1902, deliver to said Newton Parks, personally, a true copy of said affidavit, together with a notice signed by said Hawkes setting forth a full description of said property, the amount claimed by virtue of said mortgage, and the time and place of selling said property.

5th. That said defendant, as such officer, made due return of such affidavit and all proceedings thereunder, and transferred the same to the clerk of said court, in whose office the same is now on file; and thereafter in accordance with the provisions of the Revised Statutes of Idaho above stated, advertised said property mentioned in said complaint for sale at public auction on the ——— day of ———, 1902, and pursuant to such affidavit and notice sold said property to George Hawkes, who was the highest bidder therefor at such sale, for the sum of \$5,967.83, and thereafter in accordance with the said provisions issued and delivered to said George Hawkes his certificate of sale therefor.

Wherefore, this defendant demands judgment;

1st. That plaintiff take nothing by his complaint herein;

2d. That defendant take judgment for his costs.

HAWLEY & PUCKETT,

Attorneys for Defendant.

State of Idaho,
County of Ada,—ss.

William Finney being first duly sworn, deposes and says: That he is the defendant in the above-entitled action; that he has read the above and foregoing answer,

and knows the contents thereof, and that the same is true of his own knowledge.

WILLIAM FINNEY.

Subscribed and sworn to before me this 13th day of January, 1903.

[Seal]

G. G. ADAMS,
Notary Public.

Service of above answer by copy admitted this 13th day of Jan., 1903.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: Answer. Filed Jany. 13, 1903. W. L. Cuddy, Clerk. By Otto F. Peterson, Deputy. Hawley & Puckett, Attorneys for Defendant. Filed Feby. 18th, 1903. John A. Tucker, Clerk.

In the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County.

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, Sheriff,

Defendant.

Findings of Fact and Conclusions of Law.

This cause came on regularly for trial on the 1st day of April, 1903, before the Court, without a jury—a jury having been duly waived by the parties, and Frank

Smith and W. E. Borah appearing as attorneys for the plaintiff, and Hawley & Puckett and Jas. H. Van Dusen appearing as attorneys for the defendant, and from the facts intorduced the Court finds the facts as follows, to wit:

1. That the defendant, William Finney, during all the times mentioned in the complaint was the duly elected, qualified and acting sheriff of the county of Blaine, State of Idaho.

2. That on July 24, 1902, and at all times mentioned in the complaint the plaintiff was the owner and entitled to the possession of certain sheep in number 2629; that upon said date the defendant wrongfully and without the consent of the plaintiff took said sheep from the plaintiff's possession; that the value of said property at said time of taking was \$8,281.35; that demand was duly made for the return of said property prior to the time of filing the complaint in the above action, and that said return was refused, and that the sheep were afterwards sold by the defendant at public sale.

3. That the defendant, in taking possession of said sheep, was acting under and by virtue of a certain chattel mortgage dated November 30, 1901, executed by R. L. Shaw individually to the Flato Commission Company, and purporting to cover 3,500 head of yearling wethers, 3,500 ewes and 3,500 head of mixed lambs and wool described in said mortgage as being located about twelve or fifteen miles south of Boise City, Ada County, Idaho; that at the time of the execution of said mortgage, the said sheep in question in this suit were in Canyon

County, Idaho, and were then located there; that said mortgage was never filed or recorded in Canyon County, and was not filed or recorded in Blaine County until July 23, 1902.

4. That said mortgage was not verified, was executed by R. L. Shaw individually, and did not upon its face purport to cover other than individual property.

5. That 2,100 head of the sheep which were taken possession of by the defendant were sheep which had formerly belonged to the copartnership of Shaw & Cowan composed of R. L. Shaw and J. B. Gowan, which sheep the said plaintiff had purchased for valuable consideration and in good faith June 10, 1902; that at the time of said purchase the said sheep were in Blaine County; that the balance of said sheep over and above the 2,100 head were sheep which had formerly belonged to Cowden and Gowan, and in which said Shaw had never at any time had any interest; that said Cowden purchased said Gowan's interest therein about June 10, 1902; that at the time of said purchase of said sheep the said plaintiff had no actual knowledge of the existence of said mortgage above referred to; that the same was not upon record in Blaine County at the time of the purchase nor until July 23, 1902, and was never at any time of record in Canyon County.

CONCLUSIONS OF LAW.

As conclusions of law from the foregoing facts the Court finds that said mortgage is void as to this plaintiff and did not create any lien upon said property.

Second. That the plaintiff is entitled to judgment for the return of said property, to wit, 2,629 head of sheep branded quarter circle G, in black paint, or in case return cannot be had, to judgment against the defendant for the value thereof in the sum of \$8,281.35, with interest thereon at the rate of seven per cent per annum from July 24, 1902, amounting to \$516.89, total, principal and interest, \$8,798.24, and for costs of suit, and it is ordered that judgment be entered accordingly.

Dated June 17, 1903.

GEORGE H. STEWART,
Judge.

[Endorsed]: Findings. Filed June 20th, 1903. John A. Tucker, Clerk. W. E. Borah and Frank J. Smith, Attorneys for Plaintiff.

In the District Court, of the Third Judicial District of the State of Idaho, in and for Canyon County.

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, Sheriff,

Defendant.

Judgment by the Court.

This cause came on regularly for trial on the 1st day of Apr., 1903, Frank Smith and W. E. Borah appearing as counsel for plaintiff and Hawley and Puckett and Jas. H. Van Dusen for the defendant. A trial by jury having been expressly waived by the respective parties,

the cause was tried before the Court without a jury, whereupon witnesses upon the part of the plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties, and the evidence being closed the cause was submitted to the Court for consideration and decision, and after due deliberation thereon the Court files its findings and decision in writing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid it is ordered, adjudged and decreed that Ralph Cowden, the plaintiff, is entitled to recover the possession and return of the property in question, to wit, 2,629 head of sheep branded quarter circle G, black paint, or in case return cannot be had it is ordered, adjudged and decreed that said plaintiff, Cowden, have judgment against the defendant, William Finney, sheriff, for the value of said property in the sum of \$8,281.35 with interest thereon at the rate of seven per cent per annum from July 24, 1902, amounting to \$516.89 total, principal and interest, \$8,798.24 and for costs of suit and disbursements incurred in this action amounting to the sum of \$250.60.

Dated June 17, 1903.

GEO. H. STEWART,
Judge.

[Endorsed]: Judgment. Filed June 20th, 1903. John A. Tucker, Clerk. W. E. Borah and Frank Smith, Attorneys for Plaintiff.

*In the District Court, of the Third Judicial District, State
of Idaho, in and for Canyon County.*

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, Sheriff of Blaine
County, Idaho,

Defendant.

Judgment-Roll.

I, the undersigned, Clerk of the District Court of the Third Judicial District, State of Idaho, in and for Canyon County, do hereby certify the foregoing to be a full, true and correct copy of the judgment entered in the above-entitled action and recorded in Judgment-book 2, of said Court at page 121. And I further certify that the foregoing papers, hereto annexed, constitute the judgment-roll in said action.

Witness my hand and the seal of said Court this 20th day of June, 1903.

[Seal]

JOHN A. TUCKER,

Clerk.

[Endorsed]: Judgment-roll. Filed June 20th, 1903, John A. Tucker, Clerk. No. 250. Plaintiff's Exhibit "A." Filed in evidence June 3, 1905.

*In the Circuit Court of the United States, District of Idaho,
Central Division.*

WILLIAM FINNEY,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, et al.,

Defendants.

Testimony.

Appearances:

For the Plaintiff, W. E. BORAH and F. J. SMITH.
For the Defendant, B. F. NEAL and JOHN T. MOR-
RISON.

Boise, Idaho, June 3, 1905.

JOHN A. TUCKER, duly called, sworn and examined
testified as follows:

Direct Examination.

(By Mr. BORAH.)

By Mr. MORRISON.—We would like the record to show that the same stipulations are entered into in this case as we made at the opening of the other case. Also the defendants and each of them object to the introduction of any evidence for the reason that the complaint fails to state facts sufficient to constitute a cause of action against the defendants or either of them.

By the COURT.—The objection is overruled.

(Testimony of John A. Tucker.)

By Mr. MORRISON.—Exception.

By Mr. BORAH.—It is stipulated that the evidence taken in the Mills case while the Assistant Secretary of State was upon the stand, and the stipulations and exhibits referred to shall be considered as taken in this case.

Q. Mr. Tucker, you are clerk of the court of Canyon County? A. Yes, sir.

Q. You have charge of the records in the case of Cowden vs. William Finney, sheriff of Blaine County?

A. Yes, sir.

Q. I will ask you to identify the paper handed you and state generally what it is?

A. It is a judgment-roll filed in the case of Ralph Cowden vs. William Finney.

Q. And part of the archives which are in your possession as clerk of the court?

A. Yes, sir.

By Mr. BORAH.—Plaintiff offers in evidence the judgment-roll in this case.

By Mr. NEAL.—To which the defendants and each of them object for the reason that there is no evidence that there is any privity in the action or contract between the plaintiff and defendant in this action, and the defendants or either of them in the present action; and for the further reason that the record does not show notice to the defendant, the American Bonding Com-

(Testimony of John A. Tucker.)

pany, such as is required and contemplated by law requiring it to appear and defend in the former action, and for that reason the judgment is of no effect whatever as against the American Bonding Company, and is for those reasons irrelevant, immaterial and incompetent.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "A.")

Q. Mr. Tucker, you may state whether or not you have the record of the entry of that judgment with you?

A. I have.

Q. Please refer to the book and page and identify the book and page?

A. The judgment is recorded in Judgment Book No. 2, District Court of Canyon County, at page 121.

By Mr. BORAH.—We now offer in evidence page 121 of the book just identified and ask leave to make a certified copy of the same to supply the record.

By Mr. NEAL.—To which the defendants and each of them object for the reasons mentioned in the last preceding objection.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Exhibit "B.")

(Testimony of John A. Tucker.)

Q. You may refer to the other volume which you have as to the entry of judgment?

A. The judgment is docketed in Judgment Docket No. 1, District Court, Canyon County.

Q. I will ask you to read the entry in that docket referred to in the case of Cowden vs. Finney.

By Mr. NEAL.—To which defendants and each of them object for the reasons mentioned in the last objection.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Exhibit "C.")

A. (Reading:) Judgment debtor, William Finney, Sheriff Blaine County, Idaho; judgment creditor, Ralph Cowden; amount of judgment, \$8,978.24; costs \$250.60; time of entry June 20, 1903; page of judgment book, Book 2, page 121.

Q. I will ask you to state whether or not, according to your records, any part of that judgment has been paid or satisfied? A. There has been no entry.

Q. It still stands as a live judgment upon the records of your office? A. It does.

By Mr. NEAL.—To which defendants object as incompetent, irrelevant and immaterial, the plaintiff not having shown notice to defendant, the American Bonding Company, such as is required by law.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

(Testimony of William Finney.)

Cross-examination.

(Waived by defendants.)

Witness excused.

WILLIAM FINNEY, duly called, sworn and examined, testified as follows:

Direct Examination.

(By Mr. BORAH.)

Q. Are you the plaintiff in this case?

A. Yes, sir.

Q. And were at one time sheriff of Blaine County?

A. Yes, sir.

Q. While sheriff of Blaine County were you called upon to proceed in the matter of the foreclosure of a chattel mortgage for the Flato Commission Company?

A. I was.

Q. You may state who first called your attention to the fact that you were wanted to proceed?

A. A. J. Hawley, agent of the Flato Company.

Q. Were papers afterwards furnished you by which you should or could proceed to the foreclosure of the chattel mortgage?

A. Yes, sir.

Q. Who furnished them to you?

A. Mr. Hawley of Hawley and Puckett.

Q. Hawley and Puckett, the law firm of this city?

A. Yes, sir.

(Testimony of William Finney.)

Q. After receiving these papers from Hawley and Puckett did anyone appear as the representative of the Flato Commission Company?

A. Yes, sir, Mr. Hicks.

Q. Did you take possession of the sheep as requested? A. I did.

Q. Who was in company with you when you took possession of them?

A. Mr. Hicks, the agent of the Flato Commission Company.

Q. Did you proceed to sell these sheep and foreclose the chattel mortgage, as requested by Mr. Hawley?

A. I did.

Q. You may state if that is the record of your proceedings in that matter (handing witness paper.)

A. Yes, sir.

By Mr. BORAH.—We now offer in evidence certified copy of the record in the foreclosure proceedings referred to by the witness, certified to by the clerk of the court of Blaine County.

(By Mr. NEAL.)

Q. Was there a notice accompanied this affidavit at the time you received it? A. Yes, sir.

Q. Who signed it—whose signature appeared on the notice? A. To sell them?

Q. Yes, directing you to sell?

A. Why, Hawley and Puckett's.

Q. Where is that notice? Have you it now?

(Testimony of William Finney.)

A. No, sir.

Q. It was a notice directing you to sell?

A. Yes, sir.

Q. Signed by Hawley & Puckett as attorneys for the Flato Commission Company? A. Yes, sir.

Q. It was directing you to sell in compliance with the mortgage and affidavit?

A. Sell 2,600 sheep, yes—branded “G.”

Q. Under the mortgage for which the affidavit had been made? A. Yes, sir.

Q. And of which this is a copy of the affidavit?

A. Yes, sir.

Fifty-one—Federal transcript

Q. And you were required by that notice to take possession under the affidavit? A. Yes, sir.

Q. And you did take possession under the notice given you and affidavit? A. Yes, sir.

By Mr. NEAL.—We have no objection to the offer.

(Same is admitted in evidence and marked Plaintiff’s Exhibit “D.”)

(By Mr. BORAH.)

Q. This notice is the notice which accompanied the affidavit and which is signed by the counsel for the Flato Commission Company? A. Yes, sir.

Q. And directed you formally to proceed in accordance with the statute to foreclose this mortgage?

A. Yes, sir.

Q. Now, you say Mr. Hicks accompanied you as the agent of the Flato Commission Company?

(Testimony of William Finney.)

A. Yes, sir.

Q. In taking possession of the sheep?

A. Yes, sir.

Q. What did you afterwards do with the sheep?
Did you make sale of them? A. I did.

Q. Who was present, if anyone, representing the Flato Commission Company at the time of the sale?

A. Mr. Hicks.

Q. As the agent of whom?

A. As the agent of the Flato Commission Company.

Q. You were furnished a bond, were you, at the same time that you commenced this foreclosure proceeding?

A. Yes, sir.

Q. Who sent you the bond?

A. Mr. Hicks, the agent of the Flato Commission company.

Q. You may state if that is the original document.
(Handing witness paper.) A. It is.

By Mr. BORAH.—We offer in evidence the original indemnity bond.

By Mr. NEAL.—To which the defendants and each of them object for the reason that the bond is not a bond authorized by the statutes, and the execution of such a bond is contrary to the policy of the law of the State of Idaho, and the bond being void, cannot be a foundation for liability and for the further reason that it is incompetent, irrelevant and immaterial.

By the COURT.—The objection is overruled.

(Testimony of William Finney.)

By Mr. NEAL.—Exception.

(Same is admitted in evidence and marked Plaintiff's Exhibit "E.")

Q. After you took possession of those sheep was a suit commenced against you by Ralph Cowden for these same sheep? A. Yes, sir.

Q. Were the papers served upon you by the proper officer? A. Yes, sir.

Q. To whom did you transmit these papers or deliver them after they were served upon you? The summons and copy of the complaint?

A. Hawley & Puckett.

Q. As whose attorneys?

A. The Flato Commission Company's.

Q. Did you employ them in your capacity as Sheriff or individually to protect your interests?

A. No, sir.

Q. Who employed them? A. Mr. Hicks.

Q. Who drew the answer for you in that case?

A. Hawley and Puckett.

Q. Do you know Judge Van Dusen?

A. I don't know him; I saw him at Caldwell.

Q. Did he appear there as one of the counsel in the trial of that case?

A. He appeared there as counsel for the Flato Commission Company; yes, sir.

Q. Did you have anything to do with the employment of any of the counsel who represented you, or the defendant, in the case of Cowden versus Finney?

(Testimony of William Finney.)

A. No, sir.

Q. Did you have anything to do with the directing of the proceedings? A. Nothing whatever.

Q. As I understand, then, the entire proceeding, after the suit was brought was in the hands of the counsel for the Flato Commission Company?

A. Yes, sir.

Q. Was an appeal taken in that case?

A. Yes, sir.

Q. Did you have any knowledge of it at the time it was taken?

A. I did not; not right at the time.

By Mr. BORAH.—I will ask to introduce in evidence the remittitur.

By Mr. NEAL.—To which the defendants and each of them object for the reason that there was not any privity between the parties to this action, and that as to the American Bonding Company there was no notice, such as is contemplated by the law, given; and for those reasons the American Bonding Company is not and was not bound by that judgment, and the offer of the evidence is incompetent, irrelevant and immaterial.

By the COURT.—The objection is overruled.

By Mr. NEAL.—Exception.

Q. Has this judgment against you in the case of Cowden versus Finney, or any part of it, been paid or satisfied? A. It has not.

(Testimony of William Finney.)

Q. It still stands as a judgment against you?

A. Yes, sir.

Cross-examination.

(By Mr. NEAL.)

Q. You had some conversation with Mr. Hicks first, I believe?

A. Yes, sir.

Q. About when was that, Mr. Finney? I mean with reference to when you made the levy?

A. It was about two weeks before I made the levy; he was in the office there at Hailey.

Q. He told you at that time what he wanted?

A. No, not at that time; he said he might want to foreclose the mortgage at that time.

Q. Did he tell you what sheep it was on?

A. Yes, sir.

Q. Did he tell you who gave the mortgage?

A. Yes, sir.

A. No, he did not locate them at that time; at that time when he was there was the time company was claiming the sheep.

Q. The same band of sheep that you afterwards levied on for the Flato Commission Company?

A. Yes, sir; the same sheep; that is, he claimed they were the same sheep.

Q. The same band that you levied on for the Flato Commission Company?

A. Yes, sir.

Q. And, at a later time you received these papers from Hawley & Puckett?

A. Yes, sir.

(Testimony of William Finney.)

Q. What circumstances led up to Hawley & Puckett sending you these papers? Did you have any talk with them about that?

A. No, sir. I got a telephone from Mr. Hicks and he wanted to know what bond I would ask to foreclose on 2,400 sheep, more or less. I asked him how many more, and he said there might not be only a few more, and I told him I would want a \$10,000 bond.

Q. He had been at your place before that and you told him you would not levy on them without a bond?

A. No, sir; nothing at all was said about a bond.

Q. That is the only conversation you had about a bond?

A. That was all the conversation—was over the telephone two or three weeks after he had been in the office.

Q. Did you have any talk with Mr. Hawley?

A. No, sir.

Q. None whatever? A. No, sir.

Q. Did you have any talk with Mr. Hawley over the telephone on or about July 22, 1902, in which conversation Mr. Hawley told you that he wanted you to be ready to go out and make a levy on these sheep on the morning of July 24, and that George Hicks would be there to go with you? Did you or did you not?

A. Well, now, I think that came by letter. I am not positive. He said Hicks would accompany me, yes.

Q. Did you, in the course of the same conversation, say to Mr. Hawley, "I will do nothing looking to levying

(Testimony of William Finney.)

and taking possession of those sheep on the foreclosure of the Flato Commission Company mortgage until I have been indemnified?"

A. No, sir, there was nothing said about it at all.

Q. Nothing whatever?

A. No, sir. That is, Mr. Hawley had not said anything to me about it at all.

Q. Is it not the case that you refused to levy until you had a bond?

A. No, the bond was offered me before ever they asked me to take possession of those sheep.

Q. The only offer and the only talk in the matter of a bond was had between you and Hicks then, was it?

A. Yes, sir.

Q. And if Mr. Hicks says it was between you and Mr. Hawley, he is mistaken about it, is he?

A. Well, Mr. Hawley may possibly have said something about a bond, but I don't remember now of him saying anything about a bond at all; but Mr. Hicks is the one I made the bargain with about what the bond should be—the amount.

Q. You are absolutely positive that you did not refuse to levy without a bond?

A. Why, no, I did not. I possibly would if they had not offered be any—but they offered it.

Q. Were there any letters passed between you and Mr. Hawley prior to the time you received the papers?

A. Yes, there was a letter or two—I don't remember now—in regard to the sheep.

(Testimony of William Finney.)

Q. You don't remember the contents of it?

A. No, sir, not exactly; to take possession of the sheep, and that Mr. Hicks would accompany me and show me what sheep they were. That was the sum and substance of it.

Q. Did you reply to this letter?

A. I think I did.

Q. What did you tell him in reply?

A. I just merely answered the letter—that I would do so; I don't know—I couldn't tell just word for word what was in the letter now.

Q. You think you demanded the bond, then, in your letters?

A. Why, no. The bond was there before ever they asked me to take possession of the sheep.

Q. What did you do with the notice that you have received along with the mortgage? The notice signed by Hawley & Puckett?

A. Why, I think that was put with the other papers in the recorder's office. I think it was put along up with the mortgage.

Q. That is your custom to do that, is it?

A. Why, yes.

Q. You have no knowledge of where it is now?

A. I have not.

Redirect Examination.

(By Mr. BORAH.)

Q. As I understand, Mr. Finney, when you had your

(Testimony of William Finney.)

first conversation with Mr. Hicks, that was some weeks or ten days before they asked you to take possession of the sheep?

A. Yes, sir; it must have been two weeks before, when he was there in the office.

Q. And afterwards you had a communication with him over the phone, in which he asked you what bond you would ask to foreclose these sheep — about 2,600 head? A. Yes, sir.

Q. And following that conversation these papers for foreclosure and the bond were sent you?

A. They were sent to me, yes, sir.

Witness excused.

RALPH COWDEN, duly called, sworn and examined, testifies as follows:

Direct Examination.

(By Mr. BORAH.)

Q. Mr. Cowden, you are the plaintiff in the case of Cowden versus Finney, tried in the District Court of Canyon County? A. Yes, sir.

Q. In which you recovered a judgment for some \$9,500? A. Yes, sir.

Q. Has that judgment or any part of it been paid or satisfied? A. No, sir.

Q. It is still due and owing to you, is it?

A. Yes, sir.

Witness excused.

Plaintiff rests.

(Testimony of Ralph Cowden.)

By Mr. MORRISON.—The defendants, and each of them, demur to the evidence adduced, for the reason that it does not establish or tend to establish facts sufficient to constitute a cause of action against the defendants or either of them. It shows:

1st. That the bond upon which the action was brought was extorted “*colore officii*” and therefore void “*ab initio*.”

2d. That said bond was demanded and given in a case where the sheriff was fully protected by a process fair upon its face, and one which it was his duty under the law to execute.

3d. That there was a failure of any notice to the American Bonding Company sufficient to make the alleged judgment recovered against the plaintiff binding against said company.

4th. That the bond upon which this action was brought was not taken in a case in which the sheriff was authorized by statute or by any law to demand a bond, and the taking was contrary to the policy of the law.

5th. That there was a failure of any notice to the Flato Commission Company sufficient to make the alleged judgment recovered against the plaintiff binding against said company.

By the COURT.—The demurrer is overruled.

By Mr. MORRISON.—Exception.

(Testimony of Ralph Cowden.)

By Mr. NEAL.—The defendants offer in evidence the depositions of John R. Bronson, O. W. Eaton, the deposition of James C. Dahlman, and the deposition of George W. Hawkes.

By Mr. BORAH.—These depositions are exactly as were in the Mills case. They are repeated almost word for word. The objections are the same and reduced to writing and upon file, and we will rely upon those same objections.

By the COURT.—The objection to the offer of the depositions is sustained.

By Mr. NEAL.—Exception.

By Mr. NEAL.—We offer to prove by the depositions just offered and also by the oral evidence of J. C. Dressler and Ed Paine the following: First, that Ralph Cowden is not the owner of the sheep in controversy and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed. Second, that whatever interest Ralph Cowden had or acquired in the sheep in controversy was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw. Third, that the judgment in the case of Cowden versus Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500, and that that amount is the total

(Testimony of Ralph Cowden.)

amount of damage of all sorts caused in the premises, if any.

This offer to apply to each of these defendants.

By Mr. BORAH.—We object to this testimony as offered for the reason that the judgment in the case of Cowden vs. Finney is conclusive upon all the questions to which the evidence offered relates; and that that judgment is conclusive and binding upon the defendants in this case, and is incompetent, irrelevant and immaterial.

By the COURT.—The objection is sustained.

By Mr. NEAL.—Exception.

By Mr. NEAL.—We offer the depositions of Ed H. Reid and George W. Hawkes to the point that the bond was extorted.

By Mr. BORAH.—We have our objections in writing to this the same as in the other case, and we rely upon those objections.

By the COURT.—The objection is sustained.

Mr. NEAL.—Exception.

Defendant rests.

By the COURT.—Judgment is ordered, Mr. Clerk, in each case in accordance with the prayer of the complaint.

By Mr. MORRISON.—We would like the record to

(Testimony of Ralph Cowden.)

show an exception to the findings of fact and conclusions of law.

By the COURT.—You can have exceptions entered when the findings of facts and conclusions of law are filed; your exceptions will go with them. It is understood the time of preparation of the bill of exceptions will begin to run from the time the findings of facts are filed.

Case closed.

State of Idaho,
County of Ada,—ss.

I hereby certify that the above and foregoing transcript is a true, correct and complete copy of the oral evidence in the above-entitled case taken by me as stenographer in said case.

A. M. BRANNIN.

[Endorsed]: Testimony. Filed Nov. 28th, 1905. A. L. Richardson, Clerk.

Plaintiff's Exhibit "D."

Sheriff's Office,
County of Blaine.

I, William Finney, Sheriff of the County of Blaine, do hereby certify that I received the within and hereunto annexed copy of Chattel Mortgage with copy of affidavit on the 23d day of July, 1902, and personally served the

same on the 24th day of July, 1902, by delivering to and leaving with Newton Parks, agent of R. L. Shaw, a copy of mortgage and affidavit, and notice of sale, and informing the said agent, Newton Parks, of the contents thereof, and I further certify that on the 24th day of July, 1902, I took possession of a portion of the property described in the said mortgage, to wit, 2,600 head of wethers more or less, branded \widehat{G} and after due and legal notice by posting notices of sale in three public places in the precinct where said property was sold, and also by publishing notices in the News Miner, a daily paper published in Hailey, Blaine Co., Idaho, for the period of eight days, and I further certify that on the 2d day of Aug., 1902, at 2 o'clock P. M. near where Trail Creek empties into little Smoky in Blaine County Idaho, the time and place fixed for said sale, I did attend and offered for sale the above described wethers, 2,629, singly, and the same were bought by Mr. George A. Hawkes, agent for the Flato Commission Co. for (\$2.27) Two Dollars and twenty-seven cents per head, or a total amount of \$5,967.83, Five thousand nine hundred and sixty-seven and 83-100 dollars, said amount being the highest and best bid for the same, and I further certify that after deducting the amount of \$173.54 sheriff's costs and expenses and \$336.70, herders lien, the balance amounting to the sum of \$5,457.59 was credited on the mortgage and I hereby return this mortgage partially satisfied to the amount of \$5,457.59.

W. FINNEY,
Sheriff.

Hailey, Idaho, August 4th, 1902.

State of Idaho,
County of Ada,—ss.

George A. Hawkes, being first duly sworn, deposes and says: That he is the agent and representative of the Flato Commission Company, a corporation organized and existing under and by virtue of the laws of the State of Nebraska; that on the 30th day of November, 1901, at South Omaha, in the State of Nebraska, one R. L. Shaw made and delivered to said corporation, the Flato Commission Company, his certain promissory note dated of that day, by the terms of which he agreed to pay to said corporation or its order on the first day of June, 1902, the sum of ten thousand (\$10,000.00) dollars, with interest thereon from maturity at the rate of eight (8%) per cent per annum; and also at the said time and place, made and delivered his certain other promissory note, dated on that day, by the terms of which he promises to pay to said corporation or its order the further sum of eight thousand six hundred and twenty-six and 55-100 (\$8,626.55) dollars, with interest there from maturity at the rate of eight per cent (8%) per annum; and that on the said 30th day of November, 1901, for the purpose of securing the payment of said promissory notes, and each and both of them, said R. L. Shaw, made, executed and delivered to said corporation, the Flato Commission Company, his certain mortgage on the following described livestock and chattels, to wit:

Thirty-five hundred (3500) head of yearling wethers and wool.

Thirty-five hundred (3500) head of ewes, their increase and wool.

Three thousand (3,000) head of mixed lambs and wool.

All of said above-named sheep and lambs being marked with black paint \widehat{G} . Also two hundred (200) head of native two year old steers branded P. or T. on left hip.

And affiant further says that the date of maturity of said notes and each of them is long past, but that no part of the sum mentioned in said notes, or either of them, or any interest thereon, has been paid; and that there is now due to said corporation, the Flato Commission Company, from said R. L. Shaw on said chattel mortgage the sum of eighteen thousand six hundred and twenty-six and 55-100 (\$18,626.55) dollars, with interest thereon at the rate of eight per cent per annum from the 31st day of May, 1902.

GEORGE A. HAWKES.

Subscribed and sworn to before me this 22d day of July, 1902.

[Seal]

G. G. ADAMS,
Notary Public.

And you will further take notice that I will sell a portion of the above-described property, to wit, 2,600 head of wethers, more or less, near where Trail Creek empties into Little Smoky, in Blaine Co., Idaho. Sale to take place at 2 o'clock P. M.

W. FINNEY,
Sheriff.

CHATTEL MORTGAGE.

Know all men by these presents: That R. L. Shaw, mortgagor, residing at Boise City, in the County of Ada, and State of Idaho, in consideration of the sum of eighteen thousand six hundred twenty-six and 55-100 dollars, in hand paid by the Flato Commission Company (Inc.), the receipt whereof is hereby acknowledged, have assigned and sold, and by these presents do grant and convey unto the said the Flato Commission Company, and its successors and assigns, the following livestock and chattels, to wit:

3,500 head of yearling wethers and wool.

3,500 head of ewes, their increase and wool.

3,000 head of mixed lambs and wool.

All above-named sheep and lambs are marked G with black paint.

200 head of native 2 year old steers, branded P or T on left hip, now on full feed, and to be kept on feed until marketed.

Value of security, \$36,000.00.

Said above enumeration and description being intended to cover and include not only all the said property owned by said mortgagor as aforesaid, but all additions and accretions thereto and especially included and covered hereby. The livestock above-described may have other brands or marks than those mentioned above, but those given are the holding marks or brands, and carry the title thereto.

It is hereby covenanted and stated as a fact, that all of said livestock and chattels are owned by said mortgagor,

and are free and clear of all liens, and encumbrances of every kind and character; and all of said sheep are now in the possession of said mortgagor and are located in Ada County, Idaho, 12 to 15 miles south of Boise City. Cattle are located in Lemhi County, Idaho, near the town of Junction.

Said property is all the property owned by said mortgagor in said location and having the above description.

To have and to hold the said livestock and chattels unto the said the Flato Commission Company, and its successors and assigns forever; and the said mortgagor covenants to and with the said Flato Commission Company, that he will forever warrant and defend the title and possession of the said livestock and chattel against each and every person whomsoever.

It is provided, however, that the said livestock and chattels shall remain in the possession of said mortgagor herein, and fed by the mortgagor during the term of this mortgage, subject to the conditions and stipulations hereinafter set forth and expressed; but the mortgagor shall have no right to remove the same, or any part thereof, from the place where they are now located, excepting as may be herein provided, or to otherwise dispose of, or encumber said property without the written permission of the holder of the note or notes hereinafter mentioned, and at least three days before the maturity of said note or notes the above-described livestock shall be shipped and consigned to the Flato Commission Company, at Union Stock Yards, South Omaha, Neb., Union Stock Yards, Chicago, Ill., Kansas City Stock Yards, Kansas

City, Mo., or South St. Joseph, Mo., and sold by it on commission in the usual and customary way, and out of the proceeds it shall pay itself the hereinafter mentioned indebtedness.

This instrument is intended for the better securing of the Flato Commission Company, in the payment of the sum of \$18,626.55 evidenced by the mortgagor promissory note described in substance as follows:

Description of Note.

Date	Maturity	In favor of.	Where payable.	Rate of Interest.	Amount.
1901.	1902.	The Flato Com.	Co. So. Omaha, Neb.	8 %	10,000.00
Nov. 30	June 1	"	"	"	8,626.55
"	"	"	"	"	"

Together with any renewals or extentions of said note or notes or either of them, and the interest thereon, and such future advances as may be made by the said The Flato Commission Company, to the said mortgagor.

Upon the payment of said promissory note or notes with interest thereon accrued, together with the expenses incurred in executing the provisions of this mortgage being well and truly made, then this instrument is to become void.

Should any of the conditions of this instrument be broken or violated then at the option of the Flato Commission Company, or the holder of said note or notes, the above-described indebtedness may become due and payable instanter; or upon failure to pay said note or notes, or either of them at maturity, the whole of the above-described indebtedness shall become due and payable.

In case the mortgagor shall fail to keep any of the agreements herein, or if any of the statements made herein shall prove false in whole or in part; or in case said livestock shall not thrive in possession of the mortgagor, or if the Flato Commission Company, or the holder of said note or notes, should fear diminution in numbers or in the value of said property, or feel unsafe or insecure with reference to the payment of the sums of money mentioned, then in all or any of the cases aforesaid, the Flato Commission Company, or the holder of said note or notes, shall have the right and power to take immediate possession (personally or by agent, authorized by the possession of the instrument or a copy of the same) of all of said livestock and chattels wherever found, or are supposed to be, without legal process, the possession of these presents or a copy thereof being sufficient authority for any and all such action, and in any of the events above specified, the Flato Commission Company, or the holder of said note or notes, shall have the right, either on or before the maturity of the paper secured by this instrument, to sell said livestock and chattels at public auction, or such part thereof as shall be sufficient to pay the mortgage debt remaining unpaid, whether due or to become due, as the case may be, together with all costs and expenses pertaining to the searching for, taking, keeping, advertising, and selling of said property, and in case the Flato Commission Company or the holder of said note or notes, shall be put to expense for attorneys' fees in the taking, advertising, and selling of said property, or any part thereof, the mortgagor agrees to pay all such expenses incurred

the Flato Commission Company, or the holder of said note or notes, providing they shall not exceed ten per cent of the unpaid mortgage debt, and such fees are hereby secured by this mortgage, and shall be taken out of the proceeds of sale. Said sale shall take place either on the premises where said livestock and chattels are now situated, or may be found, or in South Omaha, Douglas County, Nebraska, or at such other place as may be designated by the Flato Commission Company, or the holder of said note or notes, after giving at least (20) days' notice of such sale by advertisement thereof in some newspaper published in the county where the sale is to take place. All moneys remaining after the satisfaction of the mortgage debt and other expenses shall be paid on demand of the mortgagor, who hereby authorizes the person conducting such sale to adjourn the same from time to time, if in his judgment necessary, until said livestock and chattels (or such part thereof as may be required) shall be sold and to give bills of sale to the purchaser thereof, which shall be conclusive as to the regularity of all proceedings, and convey absolutely all right and title of the mortgagor in and to the said livestock and chattels.

It is agreed and understood that the mortgagor makes the statements contained in this mortgage for the purpose of obtaining the amount of money named herein, and the same is advanced on the faith and credit of such statements.

In witness whereof I have hereunto set my hand and seal this 30th day of Nov., A. D. 1901.

R. L. SHAW. [Seal]

Witness:

W. I. HOOPER.

State of Nebraska,
County of Douglas,—ss.

I hereby certify, that on this 30th day of November, 1901, before me, W. I. Hooper, a notary public, duly commissioned, within and for said county and State, personally appeared R. L. Shaw, personally known to me to be the person and individual described as mortgagor in, and whose name is subscribed to the foregoing mortgage, and stated and acknowledged to me that he signed, sealed, executed and delivered the same for the uses, purposes and consideration therein expressed, mentioned, and set forth, as his free act and deed.

In witness whereof I have hereunto set my hand and notarial seal the day and year last above written.

[Seal]

W. I. HOOPER,
Notary Public.

State of Idaho,
County of Ada,—ss.

I, J. H. Wickersham, Ex-officio Recorder in and for Ada County, State of Idaho, do hereby certify that the annexed is a full, true and correct copy of a certain chattel mortgage, No. 1420, from R. L. Shaw to Flato Commission Company as the same appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 23d day of December, A. D. 1901.

J. G. WICKERSHAM,
Ex-officio Recorder.

[Endorsed] : Copy No. 1420. Chattel Mortgage. From R. L. Shaw, Boise City, Idaho, or Dillon, Mont., to Flato Commission Company. Filed for record on the 13th day of January, A. D. 1902, at 10 o'clock 5 minutes A. M., page 528. J. P. Clough, Recorder, Lemhi County, Idaho. Filed Aug. 2, 1902, W. E. Heard, Clerk.

State of Idaho,
County of Blaine,—ss.

I, George A. McLeod, County Recorder in and for Blaine County, Idaho, hereby certify that a copy of the annexed mortgage as set out herein, duly certified, was filed for record in this office on July 23, 1902, at 4:50 o'clock P. M., and remains on file herein.

Witness my hand and official seal this 2d day of Feb., 1905.

[Seal]

GEO. A. McLEOD,
County Recorder.

State of Idaho,
County of Blaine,—ss.

I, George A. McLeod, Clerk of the District Court of the Fourth Judicial District of Idaho, in and for Blaine County, Idaho, hereby certify that the foregoing are full, true and correct copies of all papers filed in my office, in the matter of the foreclosure of the chattel mortgage

therein set forth, from R. L. Shaw to Flato Commission Company, to wit: Return of sheriff, copy of affidavit, copy of chattel mortgage, as shown by the original thereof, on file in my office.

Witness my hand and the seal of said Court this 2d day of Feb., 1905.

[Seal]

GEO. A. McLEOD,
Clerk.

[Endorsed]: Plaintiff's Exhibit "B." Filed in evidence June 3, 1905.

Plaintiff's Exhibit "F."

In the Supreme Court of the State of Idaho, December Term, A. D. 1903.

RALPH COWDEN,

Plaintiff and Respondent,

vs.

WILLIAM FINNEY, Sheriff,

Defendant and Appellant.

On an Appeal from the District Court, of the Third Judicial District, in and for Canyon County.

Judgment.

This cause having been heretofore heard, submitted and taken under advisement by the Court, and the Court having fully considered the same, now on this day the

cause was again called, and the decision of the Court delivered by Justice Ailshie, to the effect that the judgment and the order denying a new trial by the Court below be affirmed:

It is therefore considered, adjudged and decreed by the Court that the judgment and the order refusing a new trial of the District Court of the Third Judicial District in and for the County of Canyon, in the above-entitled cause, be, and the same hereby is affirmed, costs are awarded to the respondent.

I, Sol Hasbrouck, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 13 day of February, A. D. 1904, and now remaining of record in my office.

Witness my hand and seal of the Court affixed at my office this 13 day of Feb., A. D. 1904.

[Seal]

SOL HASBROUCK,
Clerk.

[Endorsed]: Plaintiff's Exhibit "F." Filed in evidence June 3, 1905.

the State of Idaho, in and for Canyon County, and for the further reason that said judgment is conclusive and binding upon the defendants in this case.

2. Plaintiff objects to the testimony of John R. Bonson as given in his deposition for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that all matters and things covered by said testimony were and are determined by the judgment in the case of Ralph Cowden vs. William Finney, in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and for the further reason that said judgment is conclusive and binding upon the defendants in this case.

3. Objects to the answer of the following question "Did you have any correspondence with Gowan during the year 1902, or did you see any correspondence from him with reference to having any sheep to sell," for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the ownership of said sheep had been litigated and determined by the judgment in the case of Cowden vs. Finney above referred to.

4. Objects to the answer of the following questions, "What sort of sheep did he say in the letter he had to sell," for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the ownership of said sheep has been litigated and determined in the case of Cowden vs. Finney above referred to.

5. Objects to all of the testimony of said John R. Bon-

son wherein he attempts to relate the conversation with J. B. Gowan upon pages 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 of said deposition, for the reason that the same is incompetent, irrelevant and immaterial, and is concerning and touching a matter that was litigated and determined in the case of Cowden vs. Finney above referred to, and for the further reason that the judgment in the case of Cowden vs. Finney is conclusive in all matters concerning which said testimony is given and is conclusive as to the amount which the plaintiff in this case may recover, and as to who the owner of the sheep in question was.

6. Plaintiff objects to the testimony of O. W. Eaton relative to the conversation with Gowan or Cowden related in his testimony on pages 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, for the reason that the same is incompetent, irrelevant and immaterial and is concerning and touching a matter that was litigated and determined in the case of Cowden vs. Finney above referred to, and for the further reason that the judgment in the case of Cowden vs. Finney is conclusive in all matters concerning which said testimony is given, and is conclusive as to the amount which the plaintiff in this case may recover and as to who the owner of the sheep in question was.

W. E. BORAH,

Attorney for Plaintiff.

[Endorsed]: No. 250. Objections to the Testimony in the Depositions of O. W. Eaton and John R. Bonson. Filed June 2d, 1905. A. L. Richardson, Clerk. W. E. Borah, Attorney for Plaintiff.

(Title and Caption Omitted.)

Objections to Testimony in the Deposition of James C. Dahlman.

Comes now the plaintiff and makes the following objections to the testimony of James C. Dahlman in said Dahlman's deposition, to wit:

1. Plaintiff objects to all of the testimony of evidence of said James C. Dahlman for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the matter of the value of the sheep in question has been fixed and determined by the judgment in the case of Ralph Cowden vs. William Finney in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and that the judgment in said case is conclusive and binding upon the defendants in this case.

2. Objects to the answer to the following question upon page 3 of said deposition, "What would be the value of wethers one and two year old in the State of Idaho, having reference to the price at which they would sell upon the market as at Omaha, St. Joe or Kansas City," for the reason that the same is irrelevant, incompetent and immaterial, and for the further reason that the judgment in the case of Finney vs. Cowden in the District Court of Third Judicial District of the State of Idaho, in and for Canyon County, is conclusive upon these defendants and has established the value of said sheep and the amount which the plaintiff in this case is entitled to recover.

3. Objects to all the testimony thereafter given by said witness as to the price or value of the sheep covered by the suit in the case of *Finney vs. Cowden* in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, for the reason that in this case it is incompetent, irrelevant and immaterial, that the judgment in said cause of *Finney vs. Cowden* is conclusive and binding upon these defendants and has established the value of the said sheep and the amount which the plaintiff is entitled to recover in this case.

4. Objects to the testimony of said witness showing the amount realized from the sale of the sheep in question for the reason that the same is incompetent, irrelevant and immaterial and is not binding upon this plaintiff and does not constitute a measure of damages in this case and is not the proper method of establishing the liability of the defendants.

W. E. BORAH,

Attorney for Plaintiff.

[Endorsed]: No. 250. Objections to Testimony in the Depositions of James C. Dahlman. Filed June 2d, 1905. A. L. Richardson, Clerk. W. E. Borah, Attorney for Plaintiff.

(Title and Caption Omitted.)

Objections to Deposition of George A. Hawkes.

Comes now the plaintiff, and objects to the deposition of George A. Hawkes and all of the testimony of said

Hawkes in said deposition for the reason that the same is incompetent, irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case and for the further reason that the matter to which said testimony in said deposition relates was involved in the case of Cowden vs. the above-named plaintiff in the District Court of the Third Judicial District of the State of Idaho, in and for Canyon County, and that the judgment in said case is conclusive upon said matter and binding upon these defendants, and they cannot relitigate or retry said matters.

Plaintiff specially objects to that portion of the testimony of said George A. Hawkes wherein it is attempted to show the value of the sheep in question for the reason that the same question was involved in the case of Cowden vs. Finney aforesaid, and the evidence was incompetent, irrelevant and immaterial, said judgment in said case being conclusive and binding upon these defendants.

Plaintiff objects to that portion of the testimony of George A. Hawkes upon page 4 of the deposition and contained in his second answer upon said page for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

Plaintiff further objects to the testimony of said Hawkes in his third and last answer upon page four and continued to page five for the reason that the same is incompetent, irrelevant and immaterial, and for the

further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

Plaintiff further objects to the last three answers of said Hawkes for the reason that the same is incompetent, irrelevant and immaterial, and for the further reason that the judgment in the case aforesaid is binding and conclusive upon these defendants.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 250. Objections to Deposition of George A. Hawkes. Filed June 2d, 1905. A. L. Richardson, Clerk. W. E. Borah, Attorney for Plaintiff.

District of Idaho,
County of Ada,—ss.

In the Circuit Court of the United States for the District of Idaho, Ninth Circuit, Central Division, District of Idaho.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, and THE FLATO
COMMISSION COMPANY,

Defendants.

Notice to Take Deposition of George A. Hawkes.

To William Finney and W. E. Borah, his Attorney:

The above-named plaintiff will take notice that on

Saturday, the 27th day of May, 1905, the defendants and each of them will take the deposition of George A. Hawkes, a witness to be used as evidence on the trial of the above-entitled cause, at the law office of James D. Pardee, Attorney at Law, Eagle Block in the city of Sale Lake, County of Salt Lake, and State of Utah, between the hours of 9 A. M. and 6 P. M. of said day, and the taking of said depositions will be adjourned from day to day (Sundays and legal holidays excepted) between the same hours until they are completed.

MORRISON & PENCE and
NEAL & KINYON,
Attorneys for all Defendants.

Received copy of the above notice this 29th day of April, 1905, and consent is given that said depositions may be taken at the time and place in said notice specified. Subject to all objections, as to competency, relevancy and materiality.

W. E. BORAH,
Attorney for Plaintiff.

[Endorsed]: No. 250. Notice to Take Depositions.
Filed June 3d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation, Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Maryland, and The FLATO COM-
MISSION COMPANY, a Corporation
Organized and Existing Under and by
Virtue of the Laws of the State of
Nebraska,

Defendants.

Findings and Decision of Court.

This cause came on regularly for trial upon the 3d day of June, 1905, at a regular term of the above-named court. A jury having been expressly waived in writing and entered upon the minutes of the court, the case was tried before the court without a jury, F. J. Smith and W. E. Borah appearing as attorneys for the plaintiff and Morrison & Pence and Neal & Kinyon as attorneys for the defendants, and from the evidence introduced, the court finds the facts as follows, to wit:

1. That upon the 22d day of July, 1902, the defendant, the Flato Commission Company, made an affidavit for the foreclosure of a chattel mortgage upon certain sheep described in said affidavit, and delivered said affidavit together with the proper order and notice to foreclose said chattel mortgage as required by the statutes of the State of Idaho, to the plaintiff herein, William Finney, Sheriff of Blaine County, Idaho.

2. That at the time of delivering said affidavit of foreclosure and notice as aforesaid, the Flato Commission Company as principal and the other defendant, the American Bonding Company of Baltimore as surety, made, executed and delivered to said plaintiff, then sheriff of Blaine County, Idaho, a certain bond of indemnity, a copy of which is attached to the complaint herein and which said bond of indemnity is introduced in evidence herein as Plaintiff's Exhibit "E."

3. That said sheriff in company with one Hawkes, agent of the Flato Commission Company, took possession of certain sheep under and by authority of said chattel mortgage, advertised the same for sale and the same were sold to the defendant herein, the Flato Commission Company, all of which more fully appears by the sheriff's return in said foreclosure proceedings as shown by exhibit "D" introduced in evidence herein.

4. That one Ralph Cowden made claim to be the owner of the sheep taken into possession of said sheriff under and by virtue of said foreclosure proceedings and sold as aforesaid, and thereafter on the 31st day of July, 1902, commenced an action in the District Court of the

Fourth Judicial District of the State of Idaho, in and for Blaine County, against the plaintiff herein, William Finney, for the recovery of possession of said sheep or the value thereof. That said action was removed to Canyon County, Idaho, for trial, and that trial was thereafter had and such proceedings as resulted in a judgment in favor of the plaintiff therein, one Ralph Cowden against William Finney, late sheriff of Blaine County, the above-named plaintiff, for the sum of \$8,798.24 principal and interest, and for \$250 costs, said judgment bearing date June 17, 1903, all of which proceedings are more fully set forth and disclosed by the judgment-roll introduced in evidence herein as Exhibit "A."

5. That thereafter such proceedings were had in the case of Ralph Cowden vs. William Finney, sheriff of Blaine County, that an appeal was taken to the Supreme Court of the State of Idaho, and that thereafter such further proceedings were had as are more particularly shown by the remittitur in said cause which is introduced in evidence herein as Plaintiff's Exhibit "F."

6. That counsel who appeared for the sheriff in the cause above named, Ralph Cowden vs. William Finney, sheriff, were not employed by the said William Finney, but that the counsel of the defendant, the Flato Commission Company, as such, had charge of the defense in said cause and of the appeal in said cause.

7. That the sheep which were taken possession of by said William Finney and sold under foreclosure proceedings as aforesaid was the same property which was in-

volved in the litigation and for which Ralph Cowden secured judgment against William Finney as aforesaid.

8. That no part of said judgment in the case of Ralph Cowden vs. William Finney, sheriff as aforesaid, has been paid or satisfied, and that the same now stands a judgment against said William Finney, sheriff.

9. That by the name by which said bond was signed, to wit, The American Bonding and Trust Company of Baltimore City, is the same company or corporation as the American Bonding Company of Baltimore, said name having been changed as shown by its articles of incorporation on file with the Secretary of State of the State of Idaho by act of the legislature from the name of The American Bonding and Trust Company of Baltimore City to the American Bonding Company of Baltimore.

10. That the amount now due upon said judgment in the case of Ralph Cowden vs. William Finney aforesaid and for which said William Finney, late sheriff of Blaine County, is liable is \$10,290.36.

As a conclusion of law from the foregoing facts, the court finds that the plaintiff is entitled to a judgment against the defendants and each of them for the sum of \$10,290.36, lawful money of the United States, and costs of this suit, and it is ordered that judgment be entered accordingly.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 250. Findings. Filed June 5th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation,
Organized and Existing Under and
by Virtue of the Laws of the State
of Maryland, and THE FLATO COM-
MISSION COMPANY, a Corporation
Organized and Existing Under and
by Virtue of the Laws of the State
of Nebraska,

Defendants.

Judgment by the Court.

This cause came on regularly for trial upon the 3d day of June, 1905, at a regular term of the above-named court. A jury having been expressly waived in writing and entered upon the minutes of the Court, the cause was tried before the Court without a jury, F. J. Smith and W. E. Borah appearing as counsel for plaintiff, and Morrison & Pence and Neal & Kinyon as counsel for the defendants.

Whereupon witnesses were duly sworn and examined and documentary evidence introduced and the evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon the Court files its findings and decision in writ-

ing and orders that judgment be entered herein in favor of the plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid it is ordered, adjudged and decreed that the plaintiff, William Finney, late sheriff of Blaine County, do have and recover of and from the American Bonding Company of Baltimore, a corporation and the Flato Commission Company, a corporation the sum of \$10,-290.36, with interest thereon at the rate of seven per cent per annum from date hereof until paid, together with said plaintiff's costs and disbursements incurred in this action amounting to the sum of \$57.00.

Done in open court.

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 250. Judgment. Filed June 5, 1905.
A. L. Richardson, Clerk.

*In the Circuit Court of the United States for the District of
Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation,
Organized and Existing Under and
by Virtue of the Laws of the State
of Maryland, and THE FLATO COM-
MISSION COMPANY, a Corporation
Organized and Existing Under and
by Virtue of the Laws of the State
of Nebraska,

Defendants.

Notice of Motion for New Trial.

To William Finney, Late Sheriff of Blaine County, Idaho,
Plaintiff, and W. E. Borah and Frank J. Smith, his
Attorneys of Record.

You will please notice that defendants, the Ameri-
can Bonding Company of Baltimore and Flato Commis-
sion Company and each of them intends to move the
Court to grant a new trial of said cause, upon the fol-
lowing grounds, to wit:

I.

Irregularity in the proceedings of the Court, in that
the Court ordered a trial in this cause and tried the
same, after the adjournment of the regular March, A. D.—

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation,
Organized and Existing Under and
by Virtue of the Laws of the State
of Maryland, and THE FLATO COM-
MISSION COMPANY, a Corporation
Organized and Existing Under and
by Virtue of the Laws of the State
of Nebraska,

Defendants.

For correct
copy hereof,
see p. 252
of Transcript.

Notice.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal and Kinyon and Messers. Morrison &
Pence, its Attorneys:

You will please take notice that the undersigned, the
American Bonding Company of Baltimore (a Corpora-
tion), desires, and is about, to prosecute proceedings in
the above-entitled action, in the matter of a writ of error
herein, for a review by the Circuit Court of Appeals of
the United States, in and for the Ninth Circuit, of the
proceedings heretofore had herein, and desires, and is
about to do and perform each and every necessary act

or thing whatsoever, in and about the prosecution of such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein if you so desire.

Dated August 26th, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By JESSE W. LILIENTHAL,
Vice-President.

[Endorsed]: No. 250. Notice. Filed Sept. 8th, 1905.
A. L. Richardson, Clerk.

(Title and Caption Omitted.)

For correct copy, see p. 254 of this Transcript.

Notice of Intention, etc.

To the Flato Commission Company (a corporation), and to Messrs. Neal & Kinyon and Messrs. Morrison & Pence, its Attorneys:

You will please take notice that the undersigned, the American Bonding Company of Baltimore (a corporation), desires, and is about to, prosecute proceedings in the above-entitled action in the matter of a writ of error herein for a review by the Circuit Court of Appeals of the United States in and for the Ninth Circuit, of the proceedings heretofore had herein, and desires, and is about to do and perform each and every necessary act or thing whatsoever in and about the prosecution of such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, if you so desire.

Dated, August 26th, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By JESSE W. LILIENTHAL,
Vice-President.

State of Nebraska,
County of Douglas,—ss.

Joseph R. Wells, of lawful age, being duly sworn, makes oath, and says: That he served the within notice upon the Flato Commission Company, by delivering a true copy thereof to its Secretary, James C. Dahlman, in South Omaha, Nebraska, on the 2d day of October, 1905.

JOSEPH R. WELLS.

Subscribed in my presence and sworn to before me this 2d day of October, 1905.

[Seal]

GEO. L. WHITMORE,
Notary Public.

[Endorsed]: No. 250. Notice of Intention, etc. Filed Oct. 14th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

THE AMERICAN BONDING COM-
PANY OF BALTIMORE (a Corpo-
ration) et al.,

Defendants.

Objections to Proposed Bill of Exceptions.

Comes now the plaintiff and objects to the settlement or allowance of the proposed bill of exceptions heretofore filed in the above-entitled cause, and for ground of said objections says :

1st.

Said bill of exceptions was not presented, served or filed during the term of the Court at which the said action was tried and a judgment entered.

2d.

That said bill of exceptions was not served or filed within any time prescribed by law, or by the order of this Court, or by any stipulation or agreement between counsel.

3d.

That said bill of exceptions was not served and filed until more than three months after the adjournment of the term of Court sine die, at which said case was tried and judgment entered, and for more than three months

after the time extended for making and filing said bill of exceptions.

4th.

That said bill of exceptions was not filed and served until after the appeal in this case was taken, and until after said six months had elapsed from the entry of judgment in the above cause.

W. E. BORAH,
Attorney for Plaintiff, Boise, Idaho.

[Endorsed]: No. 250. Circuit Court U. S., Ninth Circuit, Central Division. William Finney, Plaintiff, vs. American Bonding Co. of Baltimore et al., Defendants. Objections to Proposed Bill of Exceptions. Attorney for Plaintiff, W. E. Borah. Filed Dec. 12th, 1905. A. L. Richardson, Clerk.

Objections sustained.

BEATTY.

*In the Circuit Court of the United States, Ninth Circuit,
Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

THE AMERICAN BONDING COM-
PANY OF BALTIMORE (a Corpo-
ration) et al.,

Defendants.

**Affidavit in Support of Objections to Proposed Bill of Ex-
ceptions.**

State of Idaho,
County of Ada,—ss.

W. E. Borah, being duly sworn, deposes and says: That he is and has been from the commencement of the litigation, one of the attorneys for the above-named plaintiff, and as such attorney is familiar with the facts herein stated, and has also taken the precaution to review the record as to dates, before making this affidavit. Affiant states that the judgment in the above-entitled cause was signed, made and entered of record June 5, 1905; that the defendants had taken a stipulation for sixty days, in which to serve and file a bill of exceptions, but that no order of the Court was ever made upon said stipulation; that said stipulation provided that the sixty days should run from notice of entry of judgment; that notice was given of the entry of judgment to the attorneys for defendants June 5, 1905; that upon June 24,

1905, after entry of said judgment, defendants' attorneys served notice in writing of a motion for a new trial; that on June 15, 1905, attorney for plaintiff served written notice for the settlement of the cost bill; that thereafter the above stipulation referred to, with reference to serving and filing a bill of exceptions, was extended by stipulation until August 19, 1905, but that no order was ever made at any time by the Court; that the time for serving and filing a bill of exceptions was never extended, by stipulation or otherwise, in any manner at all, after the 19th day of August, 1905, and that the time for defendants to serve and file a bill of exceptions expired August 19, 1905, that the term of court at which the judgment in the above-entitled cause was rendered, adjourned sine die August 17, 1905; that upon December 2, 1905, the defendants filed a petition for writ of error, the assignments of error, the order allowing appeal and the bond on appeal; that upon December 4, 1905, they filed a purported bill of exceptions with the clerk of the Court; that no service of said bill of exceptions upon counsel for plaintiff was made until December 11, 1905, that said purported bill of exceptions was filed and served more than three months after the adjournment of the above term of court sine die, and after the time for filing the same as extended by the stipulation aforesaid, and that the same was filed without any authority of the Court, or without any stipulation, or order permitting or allowing the same.

And further affiant saith not.

W. E. BORAH.

Subscribed and sworn to before me this 12th day of December, 1905.

[Seal]

JOHN J. BLAKE,
Notary Public.

[Endorsed]: No. 250. Affidavit in Support of Objections to Proposed Bill of Exceptions. Filed Dec. 12th, 1905. A. L. Richardson, Clerk. Attorney for Plaintiff, W. E. Borah.

At a stated term of the Circuit Court of the United States, for the District of Idaho, held at Boise, Idaho, on Monday, the 18th day of Dec., 1905. Present: JAS. H. BEATTY, Judge.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,
Plaintiff,

vs.

AMERICAN BONDING COMPANY,
OF BALTIMORE et al.,
Defendants.

No. 250.

Order Refusing to Settle Bill of Exceptions.

On this day was announced the decision of the Court upon the plaintiff's objection to the settlement of defendants' proposed bill of exceptions herein, heretofore argued and submitted, ordered that said objections be and the same are hereby sustained. To which ruling the defendant American Bonding Company excepted in due form of law.

Transcript of Judgment.

JUDGMENT DOCKET, DISTRICT COURT, CANYON COUNTY, IDAHO.

Judgment Debtor: William Finney, Sheriff Blaine County, Idaho.

Judgment Creditor: Ralph Cowden. Amount: \$8,798.-24. June 20, 1903, book 2, page 121. Appeal when taken, Oct. 28, 1903. Costs, \$250.60. Supreme Court costs, \$77.05.

Remittitur filed, March, 1904. Judgment and order denying a new trial by District Court affirmed. Costs awarded to respondent.

RALPH COWDEN,

Plaintiff,

vs.

WILLIAM FINNEY, Sheriff, Blaine County, Idaho,

Defendants.

Office of the Clerk of the District Court
of the Seventh Judicial District of the
State of Idaho, in and for Canyon County,—ss.

I, clerk of said court, do hereby certify that the above and foregoing is a full, true and correct transcript of the original judgment docket in the above-entitled action, of said District Court in and for Canyon County, State of Idaho.

Attest my hand and the seal of said court this 19th day of December, 1905.

[Seal of District Court] JOHN A. TUCKER,
Clerk.

Filed December 19th, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Maryland, and THE FLATO COM-
MISSION COMPANY, a Corporation
Organized and Existing Under and
by Virtue of the Laws of the State of
Nebraska,

Defendants.

Petition for Writ of Error.

Now comes the defendant, American Bonding Com-
pany of Baltimore, herein, and says that on the 5th day
of June, 1905, judgment was entered herein in favor of
plaintiff and against this defendant, for the sum of
ten thousand two hundred and ninety and 36-100 dol-

lars and costs of action, and that in the said judgment and the proceedings had prior thereto, in this cause, certain errors were committed to the prejudice of this defendant, all of which will appear in detail from the assignment of errors herein.

Wherefore said defendant prays that a writ of error may issue in its behalf to the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that the transcript of the records, and the papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

And your petitioner will ever pray.

Dated December 2d, 1905.

NEAL & KINYON,
MORRISON & PENCE,
JESSE W. LILIENTHAL,
Attorneys for said Defendants.

[Endorsed]: No. 250. Petition for Writ of Error.
Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States, Ninth Circuit
for District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Maryland, and THE FLATO COM-
MISSION COMPANY, a Corpora-
tion Organized and Existing Under
and by Virtue of the Laws of the
State of Nebraska,

Defendants.

Assignment of Errors.

The defendant, the American Bonding Company of Bal-
timore, in this action, in connection with its petition for
a writ of error herein, makes the following assignments
of error which it avers occurred:

I.

The Court erred as to said defendant, in overruling the
demurrer of said defendant to plaintiff's complaint herein.

II.

The Court erred as to said defendant, in ordering judg-
ment to be entered in favor of the plaintiff and against
said defendant for the sum of ten thousand two hundred
and ninety and 36-100 dollars and the costs of this action

and in ordering judgment in any amount whatever, against said defendant.

III.

The Court erred as to said defendant, in entering judgment in favor of plaintiff herein, against said defendant.

IV.

The Court erred as to said defendant, in overruling the objection by said defendant to the admission of any evidence herein, upon the ground that the complaint herein does not state facts sufficient to constitute a cause of action against this defendant.

V.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the judgment-roll offered in evidence during the examination of the witness Tucker, the full substance whereof is as follows:

Said judgment-roll consists of the proceedings in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County in an action wherein Ralph Cowden was plaintiff and William Finney as sheriff of Blaine County, Idaho, was defendant, and consists:

(1) Of complaint praying for the possession of certain sheep alleged to have been converted by said defendant as such sheriff, or for the value thereof, and for damages and costs;

(2) Of demurrer to such complaint;

(3) Of answer to such complaint, wherein defendant justified the taking of said property and the sale thereof

under and by virtue of certain proceedings for the foreclosure of a chattel mortgage embracing said property, given by one R. L. Shaw, to secure the payment to the Flato Commission Company of the sum therein mentioned, together with interest and costs.

That said proceedings were commenced under the provisions or secs. 3391 to 3398, inclusive, of Title 12, Chap. 4, of the Revised Statutes of Idaho, and are based on an affidavit and notice given by George W. Hawkes as the Agent of said Flato Commission Company.

That said property was in said proceeding sold to said George W. Hawkes, for \$5,967.83.

(4) Of findings of fact and conclusions of law in said action.

(5) Of judgment by said court in favor of plaintiff, and against defendant for the possession of the property therein referred to, or in case return could not be had, then for judgment for the sum of \$8,281.35, together with \$516.89 interest, and \$750.00 costs.

VI.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the entry from the judgment docket during the examination of the witness Tucker, the full substance whereof is as follows:

“Judgment Debtor, William Finney, Sheriff Blaine County, Idaho. Judgment Creditor, Ralph Cowden. Amount of Judgment, \$8,798.24. Costs, \$250.00. Time of Entry, June 20, 1903. Page of Judgment-Book, book 2, page 121.

VII.

The Court erred as to said defendant, in overruling said defendant's objection to the question, "It still stands as a live judgment upon the records of your office?" asked of the witness Tucker.

VIII.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the papers marked Plaintiff's Exhibit "E" offered in evidence during the examination of the witness, William Finney, whereof the full substance is as set forth in Exhibit "A" attached to the complaint herein.

IX.

The Court erred as to said defendant, in overruling said defendant's objection to the admission in evidence of the remittitur from the Supreme Court during the examination of the witness William Finney, which in full substance was a remittitur from the Supreme Court of the State of Idaho, announcing the affirmance of the judgment and order denying a new trial in the case of Cowden vs. Finney, already referred to.

X.

The Court erred as to said defendant, in overruling said defendant's demurrer to the evidence.

XI.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of John R. Bonson, the full substance whereof was to the effect, first, that at the time of the alleged sale

to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw to the Flato Commission Company, of the sheep alleged to have been converted by said Finney as such sheriff; second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court, of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, Sheriff, etc., defendant, in Assignment No. V hereinbefore referred to.

XII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of O. W. Eaton, the full substance whereof was to the effect, first, that at the time of the alleged sale to Ralph Cowden, plaintiff in the action hereinbefore referred to, he had full knowledge and notice of the existence of the prior mortgage by R. L. Shaw, to the Flato Commission Company of the sheep, alleged to have been converted by said Finney as such sheriff; second, that the value of the sheep so alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, sheriff, etc., defendant, in Assignment No. V hereinbefore referred to.

XIII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the

deposition of James C. Dahlman as to the value of sheep therein referred to, the full substance of which said evidence so rejected was to the effect that the value of the sheep alleged to have been converted was an amount smaller than that found by the District Court of the Fourth Judicial District of the State of Idaho, in the action entitled Ralph Cowden, plaintiff, vs. William Finney, Sheriff, etc., defendant, in Assignment No. V hereinbefore referred to.

XIV.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney as sheriff, and that said bond was without consideration, and void.

XV.

The Court erred as to said defendant, in sustaining plaintiff's objection to said defendant's offer to prove by the testimony of J. C. Dressler that said Ralph Cowden was not the owner of the sheep in controversy, and that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; and that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep, for the tak-

ing of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

XVI.

The Court erred as to said defendant, in sustaining plaintiff's objection to said defendant's offer to prove by the testimony of Ed Paine, first, that said Ralph Cowden was not the owner of the sheep in controversy; second, that they were the property of R. L. Shaw, mortgagor, and were a part of those described in the mortgage sought to be foreclosed; third, that whatever interest Ralph Cowden had or acquired in the sheep in controversy, was taken with actual knowledge that they were mortgaged to the Flato Commission Company by R. L. Shaw; fourth, that the judgment in the case of Cowden vs. Finney was excessive, and does not measure the true value of the sheep for the taking of which it was recovered at the time of said taking, and that the true value of said sheep was at said time not in excess of \$6,500.00, and that that amount is the total amount of damage of all sorts caused in the premises, if any.

XVII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the offer of said defendant to prove by the deposition of Ed. H. Reid, that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney as sheriff, and that said bond was without consideration and void.

XVIII.

The Court erred as to said defendant, in sustaining plaintiff's objection to the admission in evidence of the deposition of George W. Hawkes, the full substance of which was to the effect that the bond in suit was not given voluntarily, but under duress and coercion by plaintiff Finney as sheriff, and that said bond was without consideration, and void.

NEAL & KINYON,
MORRISON & PENCE,
JESSE W. LILIENTHAL,
Attorneys for said Defendants.

[Endorsed]: Filed Dec. 2, 1905. A. L. Richardson,
Clerk.

*In the Circuit Court of the United States of America,
Ninth Judicial Circuit, District of Idaho, Central
Division.*

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of Idaho, Central Division, held at its courtroom in the City of Boise, State of Idaho, on the 2d day of December, one thousand nine hundred and five. Present: The Honorable J. H. BEATTY, District Judge, District of Idaho, designated to hold and holding said Circuit Court.

AT LAW.

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY
OF BALTIMORE, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State
of Maryland, and FLATO COM-
MISSION COMPANY, a Corpora-
tion Organized and Existing Under
and by Virtue of the Laws of the State
of Nebraska,

Defendants.

No. 250.

Order for Filing Bond.

The defendant, American Bonding Company of Balti-
more, a corporation, having this day filed its petition for
a writ of error from the decision and judgment thereon
made and entered herein, to the United States Circuit
Court of Appeals, in and for the Ninth Judicial Circuit,
together with an assignment of errors within due time,
and also praying that an order be made fixing the amount
of security which said defendant should give and furnish
upon said writ of error, and that upon the giving of said
security all further proceedings of this Court be suspended
and stayed until the determination of said writ of error
by said United States Circuit Court of Appeals in and
for the Ninth Judicial Circuit, and said petition having
this day been duly allowed;

Now, therefore, it is ordered, that upon the said defendant, American Bonding Company of Baltimore, filing with the clerk of this court a good and sufficient bond in the sum of eleven thousand (\$11,000.00) dollars, to the effect, that if the said defendant, American Bonding Company of Baltimore, and plaintiff in error, shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation is to be void, else to remain in full force and virtue, the said bond to be approved by the Court, that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated, Dec. 2d, 1905.

JAS. H. BEATTY,
Judge.

[Endorsed]: Order for Filing Bond. Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

*In the Circuit Court of the United States of America,
Ninth Judicial Circuit, District of Idaho, Central
Division.*

At a stated term of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the District of Idaho, Central Division, held at its courtroom in the City of Boise, State of Idaho, on the 2d day of December, one thousand nine hundred

and five. Present: The Honorable J. H. BEATTY, District Judge, District of Idaho, designated to hold and holding said Circuit Court.

AT LAW.

WILLIAM FINNEY, Late Sheriff of Blaine County, Idaho, Plaintiff,

vs.

AMERICAN BONDING COMPANY OF BALTIMORE, a Corporation Organized and Existing Under and by Virtue of the Laws of the State of Maryland, and FLATO COMMISSION COMPANY, a Corporation, Organized and Existing Under and by Virtue of the Laws of the State of Nebraska, Defendants.

No. 250.

Order Allowing Writ of Error.

Upon motion of Messrs. Neal & Kinyon, Messrs. Morrison & Pence, and Jesse W. Lilienthal, Esqr., attorneys for defendant, the American Bonding Company of Baltimore, and upon filing a petition or a writ of error and an assignment of errors, it is

Ordered that a writ of error be, and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the judgment heretofore entered herein, and the other matters and things in said petition and assignment set forth, and

that the amount of the bond on said writ of error be, and hereby is, fixed at eleven thousand dollars (\$11,000.00).

JAS. H. BEATTY,
Judge.

[Endorsed]: No. 250. Order Allowing Writ of Error.
Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

Bond on Writ of Error.

Know all men by these presents: That we, American Bonding Company of Baltimore, a corporation, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto William Finney in the full and just sum of eleven thousand dollars to be paid to, the said William Finney, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this second day of December, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Circuit Court of the United States, for the Central Division, District of Idaho, in a suit depending in said court, between said William Finney, plaintiff and said American Bonding Company of Baltimore and others, defendants, and numbered 250 on the register of said court, a judgment was rendered against the said American Bonding Company of Balti-

more and the said American Bonding Company of Baltimore, having obtained from said Court a writ of error to reverse the said judgment in the aforesaid suit, and a citation directed to the said William Finney citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now, the condition of the above obligation is such, that if the said American Bonding Company of Baltimore shall prosecute the writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

AMERICAN BONDING COMPANY OF BALTI-
MORE, [Seal]

By NEAL & KINYON,
Its Attorneys,

FIDELITY DEPOSIT COMPANY OF MARY-
LAND, [Seal]
Surety.

By SHERMAN G. KING,
Its Attorney in Fact.

Acknowledged before me the day and year first above written:

State of Idaho,
County of Ada,—ss.

On this 2d day of Dec., 1905, before me, Walter S. Walker, a notary public in and for said county, personally appeared Sherman G. King, known to me to be

the person whose name is subscribed to the within instrument, as the attorney in fact of the Fidelity and Deposit Company of Maryland, and acknowledged to me that he subscribed the name of Fidelity and Depositing Company of Maryland thereto as principal, and his own name as attorney in fact.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate above written.

WALTER S. WALKER,
Notary Public.

[Endorsed]: No. 250. Bond on Writ of Error. Form of Bond and Sufficiency of Surety Approved. Jas. H. Beatty, Judge. Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, District of Idaho, Central Division, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between American Bonding Company of Baltimore, a corporation, plaintiff in error, and William Finney, defendant in error, a manifest error hath happened, to the great dam-

age of the said American Bonding Company of Baltimore, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 30th day of December, 1905, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and five.

[Seal]

A. L. RICHARDSON,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, District of Idaho, Central Division.

Allowed by:

JAS. H. BEATTY,

Judge.

Service of within writ and receipt of a copy thereof is hereby admitted this 2d day of December, 1905.

Without waiver of any rights in the premises.

W. E. BORAH,
Attorney for Defendant in Error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the District of Idaho, Central Division.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 250. Circuit Court of the United States, Ninth Circuit, District of Idaho, Central Division. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. William Finney, Late Sheriff of Blaine County, Idaho, Defendant in Error. Writ of Error. Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to William Finney,
Late Sheriff of Blaine County, Idaho, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the District of Idaho, Central Division, wherein the American Bonding Company of Baltimore, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. H. BEATTY, United States District Judge for the District of Idaho, Central Division, this 2d day of December, A. D. 1905.

JAS. H. BEATTY,
United States District Judge.

Service of within citation, by copy, admitted this 2d day of December, A. D. 1905.

Without waiver of any rights in premises.

W. E. BORAH,
Attorney for Defendant in Error.

[Endorsed]: No. 250. In the Circuit Court of the United States for the Ninth Circuit, District of Idaho, Central Division. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. William Finney, Late Sheriff of Blaine County, Idaho, Defendant in Error. Citation. Filed Dec. 2d, 1905. A. L. Richardson, Clerk.

In the Circuit Court of the United States for the District of Idaho.

WILLIAM FINNEY, Late Sheriff of Blaine County, Idaho,	} Plaintiff,
vs.	
AMERICAN BONDING COMPANY OF BALTIMORE et al.,	} Defendants.

Clerk's Certificate to Transcript.

I, A. L. Richardson, clerk of the Circuit Court of the United States, for the District of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 205, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, except the proposed bill of exceptions, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs of the record herein, amounting to the sum of \$127.30, has been paid by the appellants.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 26th day of January, A. D. 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 1320. United States Circuit Court of Appeals for the Ninth Circuit. American Bonding Company of Baltimore, a Corporation, Plaintiff in Error, vs. William Finney, Late Sheriff of Blaine County, Idaho, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States Circuit Court for the District of Idaho, Central Division.

Filed March 31, 1906.

F. D. MONCKTON,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit
for District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Vir-
tue of the Laws of the State of Mary-
land, and THE FLATO COMMIS-
SION COMPANY, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Nebraska,

Defendants.

Notice.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal & Kinyon and Messrs. Morrison &
Pence, Its Attorneys:

You will please take notice that the undersigned, the
American Bonding Company of Baltimore (a Corpora-
tion), desires, and is about to, prosecute proceedings in
the above-entitled action, in the matter of a writ of er-
ror herein, for a review by the Circuit Court of Appeals
of the United States, in and for the Ninth Circuit, of
the proceedings heretofore had herein, and desires, and
is about to do and perform each and every necessary act
or thing whatsoever, in and about the prosecution of
such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, if you so desire.

Dated August 26, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By JESSE W. LILIENTHAL,
Vice-President.

Due service of the within notice by copy is admitted this 30th day of August, 1905.

NEAL & KINYON,
MORRISON & PENCE,

Attorneys for Flato Commission Company, a Corporation.

[Endorsed]: No. 250. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Central Division. William Finney, Late Sheriff of Blaine County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore, a Corporation, etc., et al., Defendants. Notice. Filed Sept. 8, 1905. A. L. Richardson, Clerk.

UNITED STATES OF AMERICA.

District of Idaho,—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of notice in case No. 250, Wm. Finney, Late Sheriff of Blaine Co., Idaho, vs. American Bonding Co., a Corporation etc., et al., has been by me compared with the original, and that it is a correct transcript

therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District, this 7th day of March, 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
for District of Idaho, Central Division.*

WILLIAM FINNEY, Late Sheriff of
Blaine County, Idaho,

Plaintiff,

vs.

AMERICAN BONDING COMPANY OF
BALTIMORE, a Corporation Organ-
ized and Existing Under and by Vir-
tue of the Laws of the State of Mary-
land, and THE FLATO COMMIS-
SION COMPANY, a Corporation Or-
ganized and Existing Under and by
Virtue of the Laws of the State of
Nebraska,

Defendants.

Notice of Intention, etc.

To the Flato Commission Company (a Corporation), and
to Messrs. Neal & Kinyon and Messrs. Morrison &
Pence, Its Attorneys:

You will please take notice that the undersigned, the

American Bonding Company of Baltimore (a Corporation), desires, and is about to, prosecute proceedings in the above-entitled action, in the matter of a writ of error herein, for a review by the Circuit Court of Appeals of the United States, in and for the Ninth Circuit, of the proceedings heretofore had herein, and desires, and is about to do and perform each and every necessary act or thing whatsoever, in and about the prosecution of such proceedings.

And you are hereby notified to appear in the matter of such proceedings, and to join therein, if you so desire.

Dated August 26, 1905.

AMERICAN BONDING COMPANY OF BALTI-
MORE,

By JESSE W. LILIENTHAL,
Vice-President.

State of Nebraska,
County of Douglas,—ss.

Joseph R. Wells, of lawful age, being duly sworn, makes oath and says that he served the within notice upon the Flato Commission Company, by delivering a true copy thereof to its secretary, James C. Dahlman, in South Omaha, Nebraska, on the 2d day of October, 1905.

JOSEPH R. WELLS.

Subscribed in my presence and sworn to before me this 2d day of October, 1905.

[Seal]

GEO. L. WHITMORE,
Notary Public.

Due service of the within notice, by copy, is admitted this 2d day of October, 1905.

-----,
Secretary of Flato Commission Co.

[Endorsed]: No. 250. In the Circuit Court of the United States, Ninth Circuit, for District of Idaho, Central Division. William Finney, Late Sheriff of Blaine County, Idaho, Plaintiff, vs. American Bonding Company of Baltimore a Corporation, etc., et al., Defendants. Notice of Intention, etc. Filed Oct. 14, 1905. A. L. Richardson, Clerk.

UNITED STATES OF AMERICA.

District of Idaho,—ss.

I, A. L. Richardson, clerk of the United States Circuit Court for the District of Idaho, do hereby certify that the foregoing copy of notice of intention, etc., in case No. 250, Wm. Finney, Late Sheriff of Blaine Co., Idaho, vs. American Bonding Co., a Corporation, etc., et al., has been by me compared with the original, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have set my hand and affixed the seal of said Court in said District, this 7th day of March, 1906.

[Seal]

A. L. RICHARDSON,
Clerk.

[Endorsed]: No. 1320. United States Circuit Court of Appeals, for the Ninth Circuit. American Bonding Company of Baltimore etc. vs. William Finney, Late Sheriff of Blaine County, Idaho. Certified Copies of Notices to Appear, etc.

Filed March 31, 1906.

F. D. MONCKTON,
Clerk.

